ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರ

ಅಧಿಕೃತವಾಗಿ ಪ್ರಕಟಿಸಲಾದುದು

ಸಂಪುಟ ೧೪೭	ಬೆಂಗಳೂರು, ಗುರುವಾರ, ನವೆಂಬರ್ ೨೨, ೨೦೧೨, (ಮಾರ್ಗಶಿರ ೧, ಶಕ ವರ್ಷ ೧೯೩೪)	ಸಂಚಿಕೆ ೪೬

ಭಾಗ – ೪

ಕೇಂದ್ರದ ವಿಧೇಯಕಗಳು ಮತ್ತು ಅವುಗಳ ಮೇಲೆ ಪರಿಶೀಲನಾ ಸಮಿತಿಯ ವರದಿಗಳು, ಕೇಂದ್ರದ ಅಧಿನಿಯಮಗಳು ಮತ್ತು ಅಧ್ಯಾದೇಶಗಳು, ಕೇಂದ್ರ ಸರ್ಕಾರದವರು ಹೊರಡಿಸಿದ ಸಾಮಾನ್ಯ ಶಾಸನಬದ್ಧ ನಿಯಮಗಳು ಮತ್ತು ಶಾಸನಬದ್ಧ ಆದೇಶಗಳು ಮತ್ತು ರಾಷ್ಟ್ರಪತಿಯವರಿಂದ ರಚಿತವಾಗಿ ರಾಜ್ಯ ಸರ್ಕಾರದವರಿಂದ ಪುನಃ ಪ್ರಕಟವಾದ ಆದೇಶಗಳು

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110001

NOTIFICATION

Dated 27th July, 2012

No. 82/KT-HP/4&11/2009)/2012-In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the order dated 11th June, 2012 of the High Court of Karnataka in Election Petition No. 4 & 11 of 2009 filed by Shri M. Chandregouda challenging the election of Smt. J. Shantha, a member of the Lok Sabha from 9-Bellary (ST) Parliamentary Constituency & others.

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 11TH DAY OF JUNE 2012

BEFORE

THE HON'BLE MR. JUSTICE H. BILLAPPA

ELECTION PETITION No. 4/2009 &

ELECTION PETITION No. 11/2009 &

RECRIMINATION PETITION IN ELECTION PETITION No. 11/2009

ELECTION PETITION No. 4/2009

BETWEEN :

Sri M.Chandregouda, S/o. Sri Narashimha Reddy,
Aged about 63 years, No. 215, 'Matrukrupa',
Neharu Colony, 4th Cross, Basavaeswara Nagar,
Bellary City 583 101, Bellary District. **……………. Petitioner**

(By Sri H. Kantharaj & Sri Rohit D.K. Advs.)

AND

1. Smt. J. Shantha, W/o Sri B. Nagaraju,
   Aged about 35 years, Devinagar II Cross,
   Bellary – 583 104.
2. Sri N. Y. Hanumanthappa, S/o Sri Late N. Yellappa,
   Aged about 69 years, No. 270, Rampura,
   Molakalmuru Taluk, Chitradurga Taluk-577 535.
3. Sri T. Nagendra, S/o Sri P. Jambanna,
   Aged about 45 years, R/at. 16/92, Valmiki Bhavan,
   Opp. Harihara Bhajana Mandira,
   Bellary-583 101. Bellary District.
4. Sri Chowdappa, S/o Sri Bheemappa,
   Aged about 52 years, R/at No. 19, Karadidurga,
   Huchhangi Durga Post, Harapanahalli Taluk,
   Davanagere District, Davanagere-577 001.
5. Sri A. Ramanjanappa, S/o Sri A. Thippanna,
   Aged about 58 years, R/at 35/2, Jamadanadi Compound,
   Kappagal Road, Bellary-583 101. Bellary District.
6. Sri B. Ramaiah, S/o Sri P. Hulagappa,
   Aged about 61 years, R/at No. 29,
   K.H.B. Colony, Moka Road, Gandhinagar,
   Bellary-583 101. Bellary District.
7. Sri D. Ganganna, S/o Sri Devappa,
   Aged about 48 years, R/at. 183, Rampura Post,
   Molakalmur Taluk, Chitradurga District - 577 535.
8. Sri Venkateshlu, S/o Sri Sunkappa,
   Aged about 45 years, Near A.P.M.C. Compound,
   Bellary-583 101, Bellary District.
9. B. Mallikarjuna, S/o Thimmappa,
   Door No. 182, Bank Colony, Shastri Nagar,
   Bellary-583 101, Bellary District.
10. Returning Officer and The Deputy Commissioner,
    9-Bellary Lok Sabha, Bellary-583 101. Bellary District. **……………... Respondents**

(R-8, 9 & 10 : Deleted as per Court Order dated 26-07-2010)

(By M/s. Lex Nexus & Raghavacharyulu, Advs. for R1 ;
Sri D. N. Nanjunda Reddy, Sr. Counsel for
Sri B. M. Arun, Adv. for R1 ; (No objection vakalath filed)
Sri K. Chennabasappa & Sri B. Pramod Advs. for R2;
Smt. Gandhimathi K. Adv. for R4 ;
Sri K. Surendra Babu, Adv. for R5 ;
Sri G. Lakshmaih, for M/s. L.G. Associates, Advs. for R6 ;
Sri G. R. Gurumath, Adv. for R7 ;
Sri Y. Lakshmikantha Reddy, Adv. for R9
GA served in respect of R10).

This E.P. is filed under Sections 81 of the representation of People Act, 1951 by the petitioner-Sri M. Chandre Gowda who is an elector in 9-Bellary (ST) Parliamentary Constituency and also an election agent of respondent No. 2, election held on 23-4-2009, praying to (a) declare that the election of the respondent No. 1/Returned Candidate as per Annexures – 2 & 3 to be void as the Respondent No. 1/Returned Candidate is not qualified to contest in a constituency reserved for the Scheduled Tribes ; (b) declare the acceptance of the nomination of the respondent No. 1 as improper and illegal as the same has materially affected the result of the election and consequently declare the election of the returned candidate to be void ; (c) declare the election of the respondent No. 1/Returned candidate to be void on the ground of having committed electoral offences/corrupt practices as the same fall under Section 123(1)(A) and (B) read with Section 100(1)(b) of the representation of People Act, 1951 ; (d) order recount of votes secured by all the contesting candidates to the 9-Bellary (ST) Parliamentary Constituency ; (e) consequently, declare that the respondent No. 2 to have been duly elected to fill the seat of 9-Bellary (ST) Parliamentary Constituency ; (f) award cost of the proceedings.

ELECTION PETITION No. 11/2009

BETWEEN:

Sri D. Ganganna, S/o Sri Devappa,
Aged about 59 years, R/at 183, Rampura-Post,
Molakalmur Taluk, Chitradurga District – 577 535. **…………… Petitioner**

(By Sri G. R. Gurumath, Advs.)

AND

1. Smt. J. Shantha, W/o Sri B. Nagaraju,
   Aged about 35 years, Devinagar II Cross,
   Bellary – 583 104.
2. Sri N. Y. Hanumanthappa, S/o Sri Late N. Yellappa,
   Aged about 69 years, No. 270, Rampura,
   Molakalmuru Taluk, Chitradurga Dist.-577 535.
3. Sri T. Nagendra, S/o Sri P. Jambanna,
   Aged about 45 years, R/at. 16/92, Valmiki Bhavan,
   Opp. Harihara Bhajana Mandira,
   Bellary-583 101. Bellary District.
4. Sri Chowdappa, S/o Sri Bheemappa,
   Aged about 52 years, R/at No. 19, Karadidurga,
   Huchhangi Durga Post, Harapanahalli Taluk,
   Davanagere District, Davanagere-577 001.
5. Sri A. Ramanjanappa, S/o Sri A. Thippanna,
   Aged about 58 years,
   R/at. 35/2, Jamadanadi Compound,
   Kappagal Road, Bellary-583 101. Bellary District.
6. Sri B. Ramaiah, S/o Sri P. Hulagappa,
   Aged about 61 years, R/at No. 29,
   K.H.B. Colony, Moka Road, Gandhinagar,
   Bellary-583 101. Bellary District..
7. Sri Venkateshlu, S/o Sri Sunkappa,
   Aged about 45 years, Near A.P.M.C. Compound,
   Bellary-583 101, Bellary District.

8. B. Mallikarjuna, S/o Thimmappa,
Door No. 182, Bank Colony, Shastri Nagar,
Bellary-583 101, Bellary District.

9. Returning Officer and The Deputy Commissioner,
9-Bellary Lok Sabha, Bellary-583 101. Bellary District. **………….. Respondents**

(R-7 to R-9 : Deleted as per Court Order dated 26-07-2010)

(By M/s. Lex Nexus & Raghavacharyulu, Advs. for R1 ;
Sri D. N. Najaunda Reddy, Sr. Counsel for
Sri B. M. Arun, Adv. for R1 ; (No objection vakalath filed)
Sri Chennabasappa & Sri B. Pramod Advs. for R2 ;
Smt. Gandhimathi K. Adv. for R4 ;
R5 & R6 are served ; R7 served ;
Sri Y. Lakshmikanth Reddy, Adv. for R8 ;
R7 to R9 are deleted vide order dated 26-7-2010)

This E. P. is filed under Section 81 of the representation of People Act, 1951 by the petitioner – Sri D. Ganganna, who is an independent candidate from 9- Bellary Parliamentary Constituency, election held on 23-4-2009, praying to (a) declare the election of the respondent No. 1 in terms of Annexures-7 & 8 as void ; (b) declare that respondent No. 2 Sri N. Y. Hanumanthappa the candidate sponsored by Indian National Congress has been duly elected to 9-Bellary Schedule Tribe Parliamentary Constituency ; (c) any other reliefs that the Hon'ble Court may be pleased to grant in the facts and circumstances of case, in the interest of justice and equity.

RECRIMINATION PETITION
In Election Petition No. 11/2009

BETWEEN :

Smt. J. Shantha, W/o Sri B. Nagaraju,
Aged about 35 years, Devinagar II Cross,
Bellary – 583 104.

……………. Recriminatory Petitioner

(Sri B. M. Arun, Adv.)

AND

Sri N. Y. Hanumanthappa, S/o Sri Late N. Yellappa,
Aged about 69 years, No. 270, Rampura,
Molakalmuru Taluk, Chitradurga Dist.-577 535.

…………… Recriminatory Respondent

(By Sri K. Chennabasappa & Sri B. Pramod Advs.)

This Recrimination Petition is filed under Sec. 97 r/w. Sec. 83 of the Representation of People Act, 1951 on behalf of 1st Respondent/Recriminatory Petitioner, praying to reject the prayer in the election petition and thereby seeking for declaring the 2nd respondent to fill the seat, No. 9-Bellary Parliamentary Constituency, in the event of the election of the Recriminatory Petitioner being set aside by this Court.

These Election Petitions and the Recrimination petition being reserved for order on 06-01-2012 and coming on for pronouncement of order this day, the Court made the following :

ORDER

E.P.No. 4/ 2009, E.P.No. 11/2009 and Recrimination Petition have been clubbed together and common evidence has been recorded and they are disposed of by a common order.

2. These two election petitions have been filed by the petitioners praying to declare that the election of the first respondent to 9-Bellary (ST) Parliamentary Constituency is void as the first respondent was not qualified to contest the election from the reserved constituency reserved for Scheduled Tribes ; to declare that the acceptance of the nomination of the first respondent is improper and illegal ; to declare that the election of the first respondent is void on the ground of corrupt practice ; to order for recounting of votes and to declare the second respondent as duly elected.

3. The first respondent has filed recrimination petition.

The facts in EP No. 4/2009 are as follows:

4. That the petitioner is an elector of 9-Bellary (ST) Parliamentary Constituency, His identity card number is HHS. 1228097. This petitioner was an election agent of the second respondent.

5. The election to 9-Bellary (ST) Parliamentary Constituency was held on 23-4-2009. In all, seven candidates contested the election. Bharathiya Janatha Party sponsored the first respondent as its candidate. The second respondent was sponsored by the Indian National Congress. The third respondent contested the election as Bahujana Samaj Party candidate. The fourth respondent contested the election as Communist Party of India (Marxist-Leninist) candidate. The respondents 5, 6 and 7 contested the election as independent candidates. The nomination of the respondent No.8 was rejected. The respondent No. 9 withdrew the nomination. The respondent No. 10 was the Returning Officer.

6. The voting in the election was recorded by the Electronic Voting Machines (EVMs.) The counting of votes took place on 16-5-2009 at R. Y. Mahabaleshwarappa Engineering College, Bellary, between 8-00 a.m. to 11-30 a.m. The respondent No. 1 was declared elected by a margin of 2,243 votes. The respondent No. 1 secured 4,02,213 votes. The respondent No. 2 secured 3,99,970 votes.

7. That 9-Bellary (ST) Parliamentary Constituency was reserved for Scheduled Tribes. Earlier, the constituency was a general constituency. As the constituency was reserved for Scheduled Tribes, only candidates belonging to Scheduled Tribes could have contested the election. In Part VI of the Scheduled to the Constitution (Scheduled Tribes) Order, 1950, in respect of Karnataka, at Entry No. 38, Naikda, Nayaka, Chollivala Nayaka, Kapadiya Nayaka, Mota Nayaka, Nana Nayaka, Naik, Nayak, Beda, Bedar and valmiki are indicted as castes belonging to Scheduled Tribe with effect from 19-4-1991. The respondent No. 1 is not a member of Scheduled Tribe. She has contested the election from 9-Bellary (ST) Parliamentary constituency showing herself as '(Hindu) valmiki'. The certificate obtained by the first respondent is a false certificate. The first respondent belongs to boya caste which is a backward caste. Therefore. The first respondent was not qualified to contest the election from 9-Bellary (ST) Parliamentary Constituency. The election of the first respondent is void under section 100(1)(a) of the Representation of People Act, 1951.

8. The first respondent is not ordinary resident of Bellary. She is a resident of Guntakal in Ananthpur District, Andhra Pradesh State. The caste certificate issued by the Tahsildar, Guntakal Mandal, shows that the first respondent belongs to Boya caste which is classified as backward caste both in Karnataka and Andhra Pradesh. The first respondent's name appears at Sl. No. 354, Door No. 13/165, Ward No. 13, Guntakal, Ananthpur District, even as on 22-1-2009 in the electoral roll.

9. The caste Boya is not Scheduled Tribe in Karnataka.The respondent No. 1 without disclosing that she belongs to Boya caste, has obtained a false certificate from the Tahsildar, Bellary, stating that she belongs to "(Hindu) Valmiki" on 2-4-2009. There is no entry called "(Hindu) Valmiki" classified as Scheduled Tribe under the Constitution (Scheduled Tribe) Order 1950. The caste certificate issued by the Tahsildar, Guntakal Mandal, is subsequent to the certificate issued by the Tahsildar, Bellary. Therefore, the

nomination filed by the respondent No. 1 to 9-Bellary (ST) Parliamentary Constituency and her subsequent election is invalid. The petitioner on the date of scrutiny itself objected for acceptance of nomination of the first respondent on the ground that she is not qualified to contest election from 9-Bellary (ST) Parliamentary Constituency as she does not belong to Scheduled Tribe and not a resident of Karnataka. Inspite of that, the respondent No. 10 over ruled the objections of the petitioner on untenable grounds. The respondent No. 1 contested the election by playing fraud. The respondent No. 1 is not qualified to contest the election from 9-Bellary (ST) Parliamentary Constituency which is reserved for Scheduled Tribe. The respondent No. 1 who has taken the certificate as "(Hindu) Valmiki" cannot claim the benefit of Constitution (Scheduled Tribes) Order 1950.

10. The law mandates that any citizen has to be a permanent resident in a place for at least 180 days to be treated as an ordinary resident of that place and to be included in the electoral rolls of that place. The respondent No. 1 is a resident of No. 13/165, Guntakal Mandal, Ananthpur District, Andhra Pradesh State. The respondent No. 1 is not an elector of 9-Bellary (ST) Parliamentary Constituency or in any other Parliamentary constituency in India and therefore, not eligible to contest the election. Therefore, the election of the respondent No. 1 from 9-Bellary (ST) Parliamentary Constituency is liable to be declared as void under section 100(1)(a)(b)(d) of the Representation of People Act, 1951.

11. the counting of votes took place on 16-5-2009 at R. Y. Mahabaleshwarappa Engineering College, Bellary. The second respondent was leading in all the rounds up to 15th round of counting. At the end of 15th round, the second respondent was leading by 6822 votes. At that stage, the respondent No. 10 started receiving calls. To answer the them, he used to go to a private room. After 15th round, the respondent No. 10 was not in a mood to answer the queries of the petitioner. There was no display of votes from 16th round onwards either on the screen or through public address system.

12. At that time, when counting of 16th round was going on, suddenly Bharatiya Janatha Party workers started screaming saying that Bharatiya Janatha Party candidate has won and within few seconds, one Sri S. J. V. Mahipal rushed to Bharatiya Janatha party candidate and informed her that she had succeeded in the election by a margin of 2000 and odd votes. The petitioner was unable to understand as to how that was possible as the votes polled in the booths belonging to Kudligi and Bellary City Constituencies has not yet arrived to the counting hall. The petitioner and his counting agents were confused. There was no announcement of votes counted in round Nos. 16, 17 and 18. The petitioner and his counting agents suspected foul play in the counting process and objected orally.

13. The respondent No. 10 had no patience to hear the petitioner or his counting agents. He used to go out to answer the incoming calls. It was at 11.00 a.m.

14. All of a sudden, BJP leaders and hundreds of BJP workers shouted slogans that BJP candidate won the election and entered the premises near the counting hall and obstructed the passage. It was not possible for the petitioner or his counting agents to ask anything much less the votes secured by the candidates in 16th, 17th and 18th rounds of counting. The respondent No. 10 declared that the respondent No. 1 was elected by securing highest number of votes by a margin of 2243 votes.

15. The petitioner and the second respondent made all efforts to give requisition for recounting. Neither the petitioner nor the counting agents were given any opportunity to raise objections regarding counting of votes particularly in 16th, 17th and 18th rounds of counting and to seek recounting. However the petitioner made fervent request to the respondent No. 10 to receive the application for recounting of votes. The respondent No. 10 told the petitioner to come only after 5-00 p.m. on 16-5-2009. The respondent No. 10 received the application at 5-05 p.m.

16. The application for recounting was answered by the respondent No. 10 on 18-5-2009 stating that the application of the petitioner for recounting was considered and since the petitioner or his counting agents have not raised any objection orally or in writing subsequent to the entry of votes polled in Form No. 20 as per Rule 63 of the Conduct of Election Rules, 1961 and the final result sheet is already finalized, the application of the petitioner for recounting cannot be considered. The application was rejected. The petitioner or his counting agents were not aware of the votes entered in Form No. 20 as there was no announcement. There

was only a declaration of results. The announcement as provided under Rule 63 of the Rules, 1961 was not made. The result of the election was declared at 11-30 a.m. The entries made in Form No. 17 C Part II and Form No. 20 after 15th round of counting were not at all shown to the petitioner or his counting agents. The respondent No. 10 did not show the votes secured by the candidates after 15th round of counting solely to favour the respondent No.1. The respondent No. 10 has acted illegally. Therefore, it is necessary to order for recounting.

17. During polling, the respondent No. 1 being a BJP candidate took undue advantage of the BJP Government and misused the power and government machinery to favour her election. The BJP workers have distributed liquor and money throughout the parliamentary constituency. Bellary Parliamentary Constituency become notorious for violation of Model Code of Conduct. The respondent No. 2 urged for postponement of elections. A Police complaint was lodged by Sri N. Y. Pennobali Swamy in the Rural Police Station, Bellary, on 23-4-2009, alleging that on 22-4-2009 at 5.56 p.m., six members namely Giribabu, Deepak Kumar, Ragahvendra Gupta, Santhosh Kumar, Sreenivas and Subramanya, all BJP workers were entering the names of the voters in a notebook and also the amount was distributed to them. At that time, Sri D. Mahesh Kumar, the brother-in-law of Sri N. Y. Pennobali Swamy and Indian National Congress workers, approached the six members and requested to stop distribution of money to the voters. The accused did not pay heed to the request of Sri D. Mahesh Kumar. Then Congress party workers apprehended the accused who accused who were still distributing the money. After paying money to the elector, the accused were marking the name of the elector in the electoral rolls and writing down the appropriate information in a notebook. The accused were apprehended with the votes list, money and notebook and they were handed over to the Police. The police took them in a jeep towards the Bellary Rural Police Station. Sri. D. Mahesh Kumar along with Congress party workers followed the jeep. The accused threw away the notebook, voters list and packet containing currency notes into a conservancy. Sri D. Mahesh Kumar picked up the same and reached the Bellary Rural Police Station where he handed over the same to the Police. It was found that there was Rs. 15,800/- in the packet. The amount, voters list and notebook are in the custody of Bellary Rural Police Station. The Police have registered a case.

The respondent No. 6 gave requisition to the Chief Election Commissioner, New Delhi, stating that the polling process is vitiated due to intimidation of polling agents in various booths in Bellary City by the ruling BJP. The bollot boxes (EVMs) have been brought to the District Head Quarters i.e., Bellary City and the EVMs. were sought to be stored in R. Y Mahabaleshwarappa Engineering College located in the outskirts of the Bellary City till the date of counting instead of storing the EVMs in a strong room under the police supervision. It is stated, the EVMs were shifted from R. Y. Mahabaleshwarappa Engineering College in Mahindra Bolero vehicle to an unknown destination. The petitioner sent letters to the Chief Election Commissioner, New Delhi, Stating that there is total violation of the code of conduct by the ruling BJP Government in utilizing the Police and using undue influence and other unethical means to threaten common voters to vate in favour of the respondent No. 1. It is stated, one of the senior most Minister in the present Government Sri K. S Eshwarappa has made a statement that he has got reservation on the use of money and liquor to woo the voters and by virtue of that, the BJP has earned a bad name. The statement was published in English daily “The Times of India”, Bangalore dated 2-6-2009.

19. The BJP Government has not only misused the power and Governmental machinery and also distributed money and liquor throughout the State including 9-Bellary (ST) Parliamentary Constituency. Therefore, it is clear, the respondent No. 1 has committed corrupt practice and the election is liable to be declared void under section 123(1)(A)(B) r/w. sec. 100(1)(b) of the Representation of People Act, 1951. The illegalities have occurred with the consent of the respondent No. 1 and her election agent.

20. Several irregularities have taken place during polling. A large number of invalid votes have been cast by way of proxy and bogus votes. This was possible because in many polling stations the Presiding Officers have actively participated in helping the Returned Candidate to secure the bogus votes. The Presiding Officers are negligent and careless in maintaining the statutory documents. The Presiding Officers have made shocking entries in Form No. 17C. In several cases the illegality is glaring because

the entries in Form No. 17C Part 1 show that the number of votes cast are more than the number of electors assigned to the polling station. The illegalities committed in the polling have materially affected the result of the Returning Candidate.

21. The EVMs consist of two units namely the Ballot Unit and the Control Unit. The control unit is opened only on the day of counting and the votes in favour of each candidate are ascertained. To ensure that there is no foul play, each control unit is given unique identification number. The table given would indicate the control unit identification numbers used on the polling day do not match with the identification numbers of the control units which were opened on the counting day. The EVMs used on the polling day and EVMs used on the counting day are different. This clearly establishes the tampering of the EVMs. The tampering has been done to ensure the victory of the Returned Candidate.

22. The counting took place on 16-5-2009 at R. Y. Mahabalsehwarappa Engineering College, Bellary. Several irregularities have been committed in the counting. The Form No. 17C Part II which is filled up has to be signed by the counting supervisor, counting agents and the Assistant Returning Officers. But in reality, the forms have not been signed by the Supervisors and the Assistant Returning Officers. In all the EVMs referred to in the table, the Returned Candidate has secured more votes than the other candidates. The disparity in the Polling and counting has materially affected the election of the Returned Candidate.

23. Therefore, the petitioners have prayed for declaration that the election of the respondent No. 1 is void and the respondent No. 1 was not qualified to contest the election from the constituency reserved for Scheduled Tribes ; the acceptance of nomination of the respondent No. 1 is improper and illegal and it has materially affected the result of the election ; for declaration that the election of respondent No. 1 is void having committed corrupt practice ; to order for recounting of votes and to declare the second respondent has been duly elected.

24. The first respondent has filed statement of objections contending that the petitioner has failed to plead the material facts and non-compliance with the procedure is fatal to the election petition. The petitioner has not complied with the requirement of section 83 of the Act and the pleadings are vague, baled and bereft of material facts and therefore, the election petition deserves to be rejected.

25. The averment that the petitioner is an elector of 9-Bellary (ST) Parliamentary Constituency is denied and the petitioner is put to strict proof of the same.

26. The averments that the first respondent has contested as a Scheduled Tribe candidate by misrepresenting as "(Hindu) Valmiki" and the Scheduled Tribe certificate issued by the Tahsildar, Bellary, is a false certificate and there is no entry called "(Hindu) Valmiki" which is classified as Scheduled Tribe under the Constitution (Scheduled Tribes) Order 1950 and infact the first respondent belongs to Boya caste which does not come under Scheduled Tribe are denied as incorrect statements. Further the averments that on the date of scrutiny itself, the petitioner had objected for acceptance of the nomination of the first respondent and the Returning officer overruled the objections on untenable grounds are denied as incorrect statements,.The caste certificate is obtained behind the back of the first respondent and it is a got up document. The petitioner cannot dispute the caste of the first respondent on the ground that her husband belongs to Backward Caste and therefore, she acquires the status of a person belonging to Backward Caste. The word " Hindu" denoted in the brackets along with word "Valmiki" refers to Hindu religion and nothing else. The first respondent cannot be held responsible if the authorities have issued certificate in that manner.

27. The averments that the law mandates that any citizen has to be a permanent resident for atleast 180 days to be treated as ordinary resident of that place and they include in the electoral rolls of that place are denied. The Court has no jurisdiction to decide the issue of ordinary/permanent residence of an individual. The first respondent is not a resident of No. 13/165 of Guntakal Mandal in Ananthapur District. The resident certificate is obtained by the petitioner behind the back of the first respondent in collusion with the officials and no significance can be attached to it. The Returning Officer has stated in his order dated 6-4-2009 that from the records, it is clear that the first respondent was born in Bellary and she has studied till PUC in Bellary and therefore,

she has to be considered as belonging to Scheduled Tribe. The Petitioner has suppressed the material facts and has referred to only fabricated records to suit his convenience.

28. The allegations that the second respondent was leading in all the rounds upto 15th round of counting and at that stage, the Returning Officer started receiving calls on his mobile phone and he used to go to a private room and was not in a mood to answer the queries and there was no display of votes secured by the candidates from 16th round onwards are denied as false statements. It is denied when 16th round of counting was going on, the BJP workers started shouting that the BJP candidate has succeeded with a margin of 2000 and odd votes and there was no announcement of votes counted in round Nos. 16, 17 and 18. It is also denied that there was total chaos and it was not possible for the petitioner or counting agents to ask about the votes secured by the candidates in the 16th, 17th and 18th round of counting and no opportunity was given to raise the objection and after persistent efforts, the petitioner was informed by the Returning Officer to come at 5.00 p.m. and he received the application at 5.05 p.m. and the application for recounting was answered only after two days i.e., on 18-5-2009. It is stated, the second respondent was never present during the process of counting on 16th May, 2009 and therefore, there is no question of either the petitioner or the second respondent making any efforts to give requisition for recounting. The application filed by the petitioner at 5.00 p.m. is afterthought and after declaration of result.

29. The averments that the petitioner and the counting agent were not made known of the votes entered in Form No. 20 and the Returning Officer did not show the votes secured by the candidates after 15th round of counting solely with an intention to favour the first respondent are denied. It is stated, the petitioner has not specifically pleaded with regard to violation of any provisions of the Act or Rules, in particular Rule 66A, with regard to counting of votes which has materially affected the result of the election. The petitioner has not furnished the details of the irregularities in the counting from 16th round onwards i.e., the number of votes which were counted contrary to the Rules or any improper reception of votes in favour of the first respondent. It is denied that there was no announcement of votes entered in Form No. 20 before declaration of result. It is stated, the process of counting was done in accordance with law.

30. The allegations that on 23-4-2009, Sri N. Y. Pennobali Swamy, had given a complaint to the Station House Officer, Rural Police Station, Bellary, that on 22-4-2009, several BJP workers were entering the names of voters in a note book and also the amount distributed by them and when it was brought to their notice, they did not pay need and then, some Congress Party workers apprehended them along with the voters list, money and the note book and the handed them over to the Police and when the Police personnel were taking them in a jeep to the Police Station, the said persons threw away voters list, money and note book and D. Mahesh Kumar, the brother-in law of N. Y Pennobali Swamy, notice the same and handed over the same to the Bellary Rural Police Station and FIR was registered on the next day are denied as false and baseless statement.

31. The allegations that 6th respondent had given representation to the Election Commission of India about the safety of EVMs and violation of Model Code of Conduct and the allegation that one of the senior most Minister Shri K. S Eshwarappa has made a statement that he has got reservation on the use of money and liquor to woo the voters and BJP has earned a bad name and BJP/Government has misused the power and Government machinery and the illegalities have occurred with the consent of the first respondent and her election agent are denied. It is contended that the petitioner has made general allegations without specifically pleading which of the acts were with the consent of the first respondent and which of the acts were with the consent of her election agents. The allegations are bald, frivolous and vexatious.

32. The allegations that large number of votes were cast by way of proxy and bogus votes and this was possible as the Presiding Officers actively participated in helping the returned candidate and in several cases the illegality is glaring as Form No. 17C Part 1 shows that the number of votes cast are more than the number of electors and there are several omissions and commissions and the identification number of the control units used on the polling day do not match with the identification number of the control units which wren opened on the counting day are all denied. It is contended, the petitioner has not pleaded now the

alleged omissions have materially affected the result of the election and how the replacement of control units was made. The averments are vague and bereft of merit.

33. The allegations that Form No. 17C Part II has to be signed by the counting supervisor, counting agents and Assistant Returning Officers and they have not signed in all the EVMs., the first respondent has secured more votes than the other candidates and disparity has materially affected the election of the first respondent are denied as frivolous and vexatious statements. It is contended, the petitioner has not specifically pleaded violation of any of the provisions of the Act or the Rules which has materially affected the result of the election and the petitioner has not furnished the details of the irregularities or any improper reception of votes in favour of the first respondent.

34. The petitioner has arrayed respondents 8 and 9 as parties. They had filed their nominations, but later on, they withdrew them. There is no allegation of corrupt practice against them. Therefore, they are not necessary parties. The respondent No. 10 is the Returring Officer, Under section 82 of the Act, he is not a proper party. Therefore, the respondents 8 to 10 have to be deleted from the array of the parties.

35. The averment that the first respondent is not qualified to contest the election from No. 9-Bellary (ST) Parliamentary Constituency and she had committed corrupt practice, fraud and various irregularities during polling and counting are denied.

36. The allegations that the first respondent obtained false caste certificate showing herself and misrepresenting as "(Hindu Valmiki)" before the Tahsildar, Bellary and the first respondent belongs to "Boya" caste which is a backward caste and she was not qualified to contest the election from a constituency reserved for Scheduled Tribe are denied. It is stated, the first respondent was born in Bellary District in Valmiki community, which is classified as Scheduled Tribe under the Constitution (Scheduled Tribes) Order 1950. In the school certificate, the first respondent is shown as belonging to Valmiki community. The Tahsildar has issued caste certificate which shows that the first respondent belongs to Valmiki community, which is classified as Scheduled Tribe under the Constitution (Scheduled Tribes) Order 1950.

37. The averment that the first respondent is not an ordinary resident of Bellary and that she is a resident of Guntakal Town in Ananthpur District of Andhra Pradesh is denied. The caste certificate produced by the petitioner does not pertain to the first respondent. She has never applied for the caste certificate in Guntakal and therefore, the authorities concerned could not have issued any caste certificate in the name of the first respondent. The caste certificate is obtained behind the back of the first respondent by the petitioner in collusion with the officials. It is true that the name of the first respondent appeared in the electoral rolls of Guntakal constituency. However, on the representation of the first respondent, the same came to be deleted by the Electoral Registration Officer.

38. The averment that the first respondent belongs to Boya caste and she has obtained a false certificate from the Tahsildar, Bellary, stating that she belongs to "(Hindu) Valmiki" is denied. It is stated that the caste certificate issued by the Tahsildar, Bellary, stating that the first respondent belongs to Scheduled Tribe under the constitution (Scheduled Tribes) Order, 1950 as amended in 1991 is issued after following due procedure. The first respondent is a resident of Bellary and her caste is shown as "Valmiki" in the school and other public records. The word "Hindu" shown in brackets in the caste certificate is purely relatable to the religion. It is clear, the first respondent is eligible to contest the election from 9-Bellary (ST) Parliamentary Constituency Bellary and her election is valid.

39. The averment that the 1st respondent does not belong to Schedule Tribe and she has suppressed the fact that she belongs to 'Boya' caste and has contested the election from the Schedule Tribe Parliamentary Constituency by playing fraud and she is not qualified to contest from a reserved constituency are denied. It is contended that the certificate issued by the Tahsildar in favour of the 1st respondent that she belongs to (Hindu) Valmiki is valid and legal and therefore, the 1st respondent is entitled to contest election from the constituency reserved for a Schedule Tribe.

40. The averments that the 1st respondent, her election agents and other persons with the consent of 1st respondent and her election agent have indulged in corrupt practice and during the polling the 1st respondent being a B.J.P. candidate took undue advantage of the B.J.P. Government and misused the power and Government machinery and the B.J.P. workers have distributed liquor and money throughout the Parliamentary constituency and there were several irregularities in the conduct of elections are denied. It is stated, the persons mentioned in the complaint have never participated or canvassed or acted for and on behalf of 1st respondent or her election agent, much less with their consent. The alleged amount and other materials said to have been seized by the police authorities does not belong to the 1st respondent or her election agent. No. money was distributed to any elector either on behalf of the 1st respondent or persons acting on her behalf.

41. It is stated, EVMs were sealed and they were intact. There was no complaint from anybody regarding any tampering or breakage of seal of the EVMs prior to counting. The alleged complaint to Chief Election Commissioner and the statement of the minister have no relevance.

42. The averments that the presiding officers have been negligent and careless in maintaining the statutory documents and entries in the Form 17(C) part I show that the number of votes cast are more than the number of electors assigned to the polling stations are denied. The entries made in Form No. 17(C) and discrepancy does not materially affect the result of the election and it may amount to a mistake. There was no irregularity or illegality in the election process right from the polling day till the date of counting and declaration of results. The votes counted were the votes cast on the date of polling and therefore, there was no tampering as alleged by the petitioner. It is stated, the entire process of counting was in accordance with the Rules and the directions of the Election Commission of India. Therefore, the first respondent has prayed for dismissal of the Election Petition.

43. The second respondent has filed his written statement contending that Bellary Lok-Sabha constituency is reserved for Scheduled Tribe and therefore, only Schedule Tribes enumerated in Sl. No. 38 in Part 6 of Annexure-4 are eligible to contest the election. The first respondent is not a Valmiki or a Scheduled Tribe. She is a Boya which is classified as backward class both in Karnataka and Andhra Pradesh. The first respondent was not qualified to contest the election. The caste certificate produced by the first respondent showing that she is a “(Hindu) Valmiki” is a false certificate. There is no caste by name “(Hindu) Valmiki” in the list of Scheduled Tribes. The Tahsildar, Guntakal Mandal, Ananthpur District, Andhra Pradesh, has issued caste certificate. In the said certificate, the name of first respondent is shown as Shanthi and her caste is classified as BC-A, Boya. The certificate is issued on 8-4-2009. In the nomination dated 3-4-2009, the name of the first respondent is shown as Shantha, Even on 8-4-2009, the first respondent was a resident of guntakal and her caste is Boya. The caste certificate produced by the first respondent is false. On the date of issuance of certificate, she was not a resident of Bellary nor she belongs to “(Hindu) Valmiki”. The first respondent was neither a voter nor resident of Bellary nor “(Hindu) Valmiki” The order of the Returning Officer over-ruling objections at the time of scrutiny of nomination papers is illegal. The respondent No. 10 has not considered the caste certificate and the resident certificate issued by the Tahsildar, Guntakal. On the other hand,he has relied upon the caste certificate issued by the Tahsildar, Bellary, which is questioned. The fact that the first respondent studied upto PUC at Bellary is not a ground to say that she is s resident and voter of Bellary. The resident certificate issued by the Tahsildar, Guntakal, on 11-4-2009 establishes that as on the date of issuance of certificate, she was residing at No. 13/165, Guntakal, Ananthpur District. The first respondent is the sister of Sri Sriramlu, who is a Minister. The enrolment of the first respondent as a voter residing in a house at 2nd cross, Devanagar, is false. The documents have been created. Therefore, the second respondent has prayed for allowing the petition.

The facts in E.P.No. 11/09 are as follows :

44. The petitioner had filed nomination to contest the election as an Independent candidate from 9 Bellary Parliamentary Constituency which is reserved for Schedule Tribes. The first respondent had also filed her nomination as a Schedule Tribe Candidate. On the date of scrutiny, objection was raised contending that the first respondent was not a member of Schedule, Tribe but she belongs to backward class. The advocate for the 1st respondent contended that no records are produced in support of the

contention that Smt. J. Shantha or her husband were the residents of Andhra Pradesh and therefore, the nomination may be accepted. The returning officer holding the Schedule Tribe certificate was issued by the Thasildar and she was born and studied up to PUC at Bellary, accepted her nomination.

45. The petitioner is producing the relevant documents namely the caste certificate issued by the Thasildar Guntakal Mandal, Ananthpur District, wherein the caste of the 1st respondent is described as Boya BC-A and she was residing at door No. 13/165, at Guntakal as an ordinary resident. The resident certificate confirm that the 1st respondent is a resident of Guntakal in Ananthpur Distric of Andhra Pradesh State. She belongs to Boya caste which is categorized as BC-A in the State of Andhra Pradesh and even in Karnataka. She, therefore, does not belong to Schedule Tribe. The first respondent has played fraud on the Tahsildar, Bellary, when she obtained the Schedule Tribe Certificate on 02-04-2009.

46. The 1st respondent's enrolment as a voter in the State of Karnataka was only for the purpose of contesting the election. It is volatile of Section 17 of the Representation of People Act 1950. The caste certificate shows the caste as "(Hindu) Valmiki" which does not fine place in the notification issued by the President of India under Article 342 of the Constitution of India. Therefore, from the caste certificate it cannot be said that the first respondent belongs to Schedule Tribe.

47. It is stated, the acceptance of nomination of the first respondent is illegal and therefore, the election of the 1st respondent is liable to be declared as void under Section 100(1)(d)(i) of the Representation of People Act 1951, Therefore, the petitioner has prayed for declaration that the election of the first respondent is void and to declare the second respondent as duly elected for 9-Bellary (ST) Parliamentary Constituency.

48. The first respondent has filed her objections contending that the caste certificate issued by the Tahsildar, Guntakal Mandal, Ananthpur district, Andhra Pradesh, is a got up document and it is obtained behind the back of the first respondent. It is stated, the name of the first respondent finds place in the voters list of Bellary constituency and the entry in the voters list at Guntakal is deleted. The first respondent was born in Bellary District and her entire school and public records show that she belongs to Valmiki caste which is recognized as Scheduled Tribe. The petitioner has arrayed 8th and 9th respondents as parties. 8th respondent had filed nomination and no allegations of corrupt practice have been made against him. The 9th respondent is the Returning Officer. He is not a proper or necessary party to the election petition. Therefore, 8the and 9th respondents have to be deleted.

49. It is stated, frivolous objections were raised at the time of scrutiny of nominations. However, after considering all the material before him, the Returning Officer has rejected the objections. The caste certificate produced by the petitioner showing that the first respondent belongs to Boya BC-A is a got up document. The first respondent has never claimed or given a declaration that she belongs to Boya Community. There is no question of any authority in Andhra Pradesh, much less the Tahsildar, Guntakal Mandal, Ananthpur District, giving any caste certificate in the name of the 1st respondent showing her as belonging to Boya community. It is denied that the first respondent is residing at door No. 13/165, Gundtakal as an ordinary resident. The first respondent has produced voters list which shows that the first respondent is a resident of Bellary District. The first respondent has got her name deleted from the voters list of Guntakal town. Therefore, no significance can be attached to the document which was prepared as on 1-1-2009. The resident certificate does not contain the date of issuance. Having regard to the fact that the name of the first respondent is included in the voters list of Bellary, no significance can be attached to the resident certificate which has been obtained behind the back of the first respondent. In view of the contemporaneous documents showing that the 1st respondent belongs to "Valmiki Caste" and a resident of Bellary, no significance can be attached to the documents produced by the petitioner. It is denied that the first respondent has played fraud on the Tahsildar, Bellary, by obtaining Scheduled Caste certificate dated 2-4-2009. It is stated, the first respondent belongs to Valmiki Caste which is a Scheduled Tribe under the Constitution (Scheduled Tribes) Order, 1950 and she is a resident of Bellary. The documents produced by the first respondent clearly show that the first respondent was born and brought up in Bellary District and she belongs to Valmiki caste.

50. It is stated, the name of the first respondent was included in the voters list of Bellary Constituency and her name was deleted in the voters list of Guntakal. There is no violation of section 17 of the Representation of People Act, 1950.

51. It is stated, the word "Hindu" found in the caste certificate only refers to the religion of the 1st respondent and therefore, no significance can be attached to it. The word "Valmiki" finds a place in the notification issued by the President of India under Article 342 of the Constitution of India. Therefore, it is incorrect to contend that the first respondent does not belong to Scheduled Tribe. The contention that the acceptance of the nomination of the first respondent is illegal and her election is liable to be declared void under section 100(1)(d)(i) of the Representation of People Act, 1951, is untenable. It is denied that the first respondent does not possess the qualification for being a member of Parliament as provided under Article 84(e) of the Constitution of India. Therefore, the first respondent has prayed for dismissal of the election petition.

52. The second respondent has filed his written statement admitting the petition averments and praying to allow the petition.

The facts in Recrimination Petition in E.P. No. 11/2009.

53. The first respondent has filed recrimination petition contending that the petitioner has been set up as an independent candidate by the second respondent and he is a dummy candidate. The recrimination petitioner was informed that the petitioner and the second respondent are natives of the same village and they are close relatives. The petitioner did not have any source of income to meet the election expenditure. The second respondent had set up another independent candidate (dummy candidate) Sri Ramaiah, the 6th respondent, who is none other than the brother-in-law of the second respondent and had paid a sum in excess of Rs. 3 lakhs to him at his residence before 4-4-2009 at Bellary. The respondent No. 6 had appointed one Sri N. Y. Pennobali Swamy as his election agent. The said Sri N.Y. Pennobali Swamy is none other than the brother of the second respondent. The second respondent by setting up dummy candidates has committed corrupt practice under section 123(1)(A)(a) of the Representation of Peoples Act, 1951.

54. The second respondent addressed several public meetings from 10-4-2009 to 20-4-2009 in several places. He had promised the voters, in the event of his getting elected, he would ensure that the agriculturists/land owners get an opportunity to carry iron ore Mining activities in their lands.The second respondent had addressed gathering at Janekunte village in Bellary Taluk comprising mostly of agriculturists and had made several assurances. By the said promise, the second respondent has secured a lead of more than 53,000 votes in Sandur and Vijayanagar Assembly Segments.

55. It is stated that the second respondent has distributed money through his family members, supporters and his party workers to the voters and requested them to vote in his favour. A case of crime No. 80/2009 of Kaulbazaar Police Station has been registered against Sri Vijayakumar, the son of the second respondent and others. The recrimination petitioner was informed that the said persons were caught red-handed on 16-4-2009. The second respondent has consented and committed corrupt practice of bribery under section 1239(1)(A)(b) of the Representation of Peoples Act.

56. The second respondent has distributed money and liquor through his family members, supporters and his party workers to the voters and requested them to vote in his favour. In this regard, several cases are registered in various police stations. One such case is Crime No. 48/2009 under section 123(1) of the Act read with section 171(E) of the IPC against one Lakshmana and others. The second respondent is not entitled to be declared as elected in the event of the election of the first respondent being declared as null and void.

57. The petitioner has filed statement of objections denying the allegations made in the recrimination petition and has prayed to reject the recrimination petition.

58. Based on the above pleadings, the following issues have been framed :

Issues in E.P. No. 4/2009

1. Whether the petitioner proves that the respondent No. 1 belongs to Boya caste and not to Valmiki caste which is recognized as Scheduled Tribe under the Constitution (Scheduled Tribes) Order, 1950 and the certificate obtained by the respondent No. 1 from the Tahsildar, Bellary, certifiying that the respondent No. 1 belongs to (Hindu) Valmiki is contrary to the consitituion (Scheduled Tribes) order, 1950 ?

2. Whether the petitioner proves that accepting of the nomination papers of the respondent No. 1 by the Returning Officer to contest the election from No. 9, Bellary Loksabha Constituency reserved for S.T. candidate is improper and illegal ?

3. Whether the petitioner proves that the first respondent was not a voter anywhere in India as on the date of filling the nomination and therefore, she could not have contested the election ?

4. Whether the petitioner proves that there is violation of the provisions of R.P. Act and the Rules framed there under in regard to the counting of votes of No. 9, Bellary Lokasabha Constituency and it has materially affected the result of the election and therefore, the election needs to be declared as null and void ?

5. Whether the petitioner proves that there is illegality and irregularity in counting of the votes as alleged in paras 25 to 29 of the election petition and it has materially affected the result of the election ?

6. Whether the petitioner proves that the rejection of the request for recounting of votes by the returning officer is illegal and recounting needs to be ordered in the circumstances of the case ?

7. Whether the petitioner proves that the respondent No. 1 and her election agents and other agents committed corrupt practice as alleged in paras 4, 22 to 29 of the election petition within the meaning of section 123(1)(A) r/w. section 100(1)(b) of the Representation of Peoples Act, 1951 ?

8. Whether the petitioner proves that the respondent No. 1 has committed corrupt practice by obtaining assistance from the Returning Officer, Assistant Returning Officer and Counting Staff within the meaning of section 123(7) of R.P. Act ?

9. Whether the petitioner proves that the election of the first respondent to No. 9, Bellary Loksabha Constituency reserved for ST candidate is null and void and therefore, needs to be set-aside ?

10. Whether the petitioner proves that the respondent No. 2 has to be declared as elected ?

11. Whether the respondent No. 1 proves that the petition has to be dismissed for non-disclosure of cause of action ?

12. Whether the respondent No. 1 proves that the petition has to fail on account of the misjoinder of parties ?

13. What Order ?

Issues in E.P. No. 11/2009

1. Whether the petitioner proves that the respondent No. 1 belongs to Boya caste and not to Valmiki caste which is recognized as Schedule Tribe under the Presidential Notification

and the caste certificate obtained by the first respondent is contrary to the constitution (Schedule Tribes) Order, 1950 ?

2. Whether the petitioner proves that the nomination of the 1st respondent as a candidate from No. 9 Bellary Parliamentary Constituency has been improperly accepted ?

3. Whether the petitioner proves that the election of the respondent No. 1 has to be set aside ?

4. Whether the petitioner proves that the respondent No. 2 has to be declared as elected ?

5. Whether the respondent No. 1 proves that the petition has to be dismissed for non-disclosure of cause of action ?

6. Whether the respondent No. 1 proves that the petition has to fail on account of the misjoinder of the parties ?

7. What order ?

ISSUES IN RECRIMINATION PETITION

1. Whether the respondent No. 1 proves that the respondent No.2 has committed corrupt practice by distributing money within the meaning of section 123(1)(A)(b) of the Representation of Peoples Act, 1951 ?

2. Whether the respondent No. 1 proves that the respondent No. 2 has committed corrupt practice by setting up dummy candidates within the meaning of Section 123(1)(A)(a) of the Representation of Peoples Act, 1951 ?

3. What Order ?

59. The petitioners have examined P.Ws. 1 to 11 and exhibits P.1 to P. 228 have been marked.

60. The first respondent has Examined RWs. 1 to 132 and exhibits R. 1 to R 22 have been marked.

61. Heard the learned counsel for the parties.

62. The learned counsel for the petitioner in E.P. No. 4/2009 contended that the first respondent belongs to Boya caste and she was not qualified to contest the election and the nomination of the first respondent has been improperly accepted for 9-Bellary Parliamentary Contituency which was reserved for Scheduled Tribe. Further he submitted that Boya is a backward caste and “(Hindu) Valmiki” is not a Scheduled Tribe. Further he submitted that Ex. P.5 is issued just two days prior to the last date of filing the nomination. He also submitted that the first respondent belongs to Boya caste and the caste certificate obtained by the first respondent that she belongs to “(Hindu) Valmiki” is a false certificate. He also submitted that the first respondent has obtained false certificate to contest the election. Further he submitted that objection was raised at the time of scrutiny as per Ex.P.8(a) stating that the first respondent does not belong to Scheduled Tribe and the caste certificate discloses that the first respondent belongs to “(Hindu) Valmiki” and the certificate is not in accordance with the presidential order. The Returning Officer should have seen the presidential order. Therefore, the decision taken by the Returning Officer is not correct. Further he submitted that “(Hindu) Valmiki” is not mentioned in Ex. P.4. The caste certificate does not conform to the presidential order. Section 36 of the Representation of People Act provides for an enquiry. The returning Officer has erred in accepting the nomination without verifying whether “(Hindu) Valmiki” is a Scheduled Tribe or not. Therefore, the acceptance of nomination of the first respondent is improper. The respondent No. 1 has admitted that she belongs to “Boya” caste. Therefore, the petitioner has established that the respondent No. 1 belongs to “Boya” caste and she does not belong to Scheduled tribe and therefore, she is not entitiled to contest election from 9-Bellary Parliamentary Consitiuency. The election has to be declared void and set-aside.

63. Further he submitted that before getting her name deleted in the electoral roll at Guntakal, the first respondent has made application at Bellary to include her name in the voters list. The declaration in Ex. P.81 is a false declaration, It is mentioned in the application that she was residing at Bellary since twenty months. It is false that she was residing at Bellary since 2005. Further he submitted that the declaration is false and the entry made is invalid. She is not a voter in Bellary. The first respondent was not an elector of any Parliamentary Constituency at the time of filing nomination.

64. Further he submitted that Rule 66(a) of conduct of election rules has not been followed. Whatever is filled up in Form No. 20 must be announced as it provides an opportunity to request for recounting. He submitted that, in several cases, in Form No. 17C Part I, the control unit number has not been mentioned. He invited my attention to various documents to show that the control unit number has not been mentioned in Form No. 17C and part I. Further he submitted that the election must be conducted in accordance with the rules Non-mentioning of control unit number is a serious omission and it has materially affected the result of the election.

65. Further he submitted that exhibits P.13 and P.14 are the complaint and FIR. They show the allegations regarding distribution of money. Consent cannot be proved directly It should be inferred from the circumstances.The allegations made in the complaint clearly show that there was distribution of money.

66. The learned counsel for the petitioner placing reliance on the decision of the Hon'ble Supreme Court reported in AIR 1988 SC page 1796 submitted that merely because the documents like admission Register, Transfer certificates etc. are produced, it does not mean that the contents of the documents are also proved. Mere proof of documents would not tantamount to proof of all the contents or correctness of the documents.

2) Further placing reliance on the decision of the Hon'ble Suprem Court reported in AIR 2001 SC page 393, the learned counsel for the petitioner submitted that the Scheduled Tribes Order must be read as it is. It is not even permissible to say that a tribe, sub-tribe, part or group of any tribe or tribal community is synonymous to the one mentioned in the Scheduled Tribes Order if they are not so specifically mentioned in it. It is also not permissible to hod any enquiry or let in any evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community is included in the general name even though it is not specifically mentioned in the concerned Entry in the Constitution (Scheduled Tribes) Order, 1950. It is not open to the State Government or Courts or Tribunals or any other authority to modify, amend or alter the list of Scheduled Tribes specified in the notification issued under Clause (1) of Article 342.

(3) Placing reliance on the decisions of the Hon'ble Supreme Court reported in **AIR 1984 SCC page 77**, the learned counsel for the petitioner submitted that the elected candidate is not a member of Scheduled Tribe but a member of Backward caste and therefore, her election from the reserved constituency needs to be set aside.

(4) Placing reliance on the decision of the Hon'ble Supreme Court reported in **AIR 1984 SC page 146**, the learned counsel for the petitioner submitted that the nomination of the elected candidate has been improperly accepted and it has materially affected the result of the election and therefore, the election of the returned candidate needs to be declared as void and set-aside.

67. The learned counsel for the petitioner in E.P.No. 11/2009 submitted that there is admission that the first respondent belongs to "Boya" caste. Ex. R.9. was filed by her husband. "(Hindu) Valmiki" is not mentioned in the presidential order. The Returning Officer has not verified the caste with reference to the presidential order. The caste certificate does not conform to the presidential order. Therefore, the acceptance of the nomination of the first respondent was improper. He also submitted that the recriminator has not chosen o lead evidence. Further he submitted that the second respondent may be declared as elected.

68. The learned counsel for the first respondent contended that the petition is not maintainable. The petitioner has not proved that he is a voter. Under section 81 of the Representation of People Act, any candidate or any elector can file an election petition. The petitioner in E.P.No. 4/2009 is not a candidate or an elector and he has not proved that he is a voter and therefore, the election petition is not maintainable.

69. Further he submitted that at the time of raising objection, the petitioner did not have any documentary evidence to show that the first respondent belongs to "Boya" caste. There was no basis to raise an objection that the first respondent belongs to "Boya" caste. Exhibits P.6 and P.9 are the only documents produced by the petitioner to show that the first respondent belongs to "Boya" caste and ordinary resident of Guntakal. The documents by the first respondent clearly show that the first respondent belongs to "Valmiki" caste. Ex.P.5 is obtained in the year 2009 to contest the election. "Hindu" mentioned in the brackets refers to a religion and not a caste. The use of the word "Hindu" is of no consequence. Ex. P5 is issued based on the application Ex. P.58. The applicant claims that she belongs to "Valmiki" caste. Ex.P.59 is the report of the Revenue Officer. It shows that the first respondent belongs to "Valmiki" caste. No material is placed before the Returning Officer to disprove Ex. P.5. No objection is taken that "(Hindu) Valmiki" is not one of the castes enumerated in the presidential order. Therefore, acceptance of the nomination of the first respondent was proper and Ex. P.5 is rightly relied upon.

70. Referring to sections 35, 90 and 114 of the Evidence Act, the learned counsel for the first respondent submitted that some of the documents are ancient documents and they are presumed to be true. Exhibits P.6. And P.9. are forged documents. Exhibits R.9 and R. 10 are the applications filed by Smt. Shantha and her husband for deletion of their names from the voters list at Guntakal. Ex. R.6 is the surrender certificate issued on 9-3-2009. In view of exhibits R.6, R.9 and R.10 exhibits P.6 and P.9 could not have been issued. Based on Ex P.6 and P.9, it cannot be said that the first respondent belongs to "Boya" caste. "Intiperu" means family name and not a caste. "Boya" in exhibits R.9 and R.10 is a family name. The admission is of no consequence. The documents show that the first respondent belongs to "Valmiki" caste. Exhibits R. 71 and R72 show that the first respondent belongs to "Valmiki". Prior to the marriage or after the marriage, the first respondent belongs to "Valmiki." The petitioner has failed to show that the first respondent belongs to "Boya" caste. On the other hand, the first respondent has proved that she belongs to "Valmiki" caste. The documents produced by the first respondent clearly show that the first respondent belongs to "Valmiki" caste and her nomination has been properly accepted.

71. Further he submitted that issue No. 2 depends upon the answer to the issue No. 1. He submitted that inclusion or deletion of any name in the voters list cannot be a ground to set-aside the election. He placed reliance on the decision of the Hon'ble Supreme Court reported in **(2000) 8 SCC page 46.** Further he submitted that if the inclusion is bad, it can be challenged by way of appeal and not by way of election petition.

72. Inviting my attention to section 100 of the Representation of People Act, he submitted that improper acceptance of nomination must materially affect the result of election. The nature of infraction is not pleaded nor proved.

73. Further he submitted that the total number of votes polled must tally with the total number of votes counted. Mere non-mentioning of one or two columns in the prescribed forms is of no consequence. The irregularity, if any, will not materially affect the result of the election. The only irregularity alleged in the counting is that from 16th round onwards, no announcement was made at the end of each round. There is no evidence on record to show that no announcement was made at the end of each round. No complaint is made in any of the round. Form No. 17A and final result sheet in Form No. 20 are not summoned. Non-mentioning of control unit number is a trivial matter. The infraction must materially affect the result of the election, otherwise it is of no consequence. The petitioner has not discharged his burden in proving issue Nos. 4 and 5. The petitioner has not examined any person from T.V. channel. R.6 is not examined. Shifting of EVMs is not established. PW.1, on information, has stated that EVMs were shifted. He has no personal knowledge. Public announcement system was arranged. The announcer has not been examined. The whole thing is videographed and it could have been summoned.

74. Further he submitted that it is not proved that there was no announcement from 16th to 18th rounds. There is no complaint. The recount application has been made only in the evening. In Form No. 17C, segment number, district number and unique number are there. By mistake, instead of mentioning one number, they have mentioned some other number. The basic documents like Form No. 17A and Form No. 20 have not been summoned. The total number of votes polled and the total number of

votes counted are one and the same. Therefore, there is no discrepancy in counting. Non-mentioning or omission to mention some columns by itself is not a ground to set-aside the election.

75. Further he submitted that Form No. 17A register will give the details of the votes polled. It is not produced. Form No. 17 Part II is not summoned and it is not marked. Manipulation of EVM has not been proved. Counting agents have not been examined. They have not raised any objection at the time counting. Recounting can be ordered only before the declaration of the results. Grounds for recounting must be specified. Mere not announcing the result of counting in 16th, 17th or 18th round is not a ground for recounting. Ex.R 14 has been filed at 5.05 p.,. after declaration of the result. The request for recounting has been rightly rejected. There is mention in the application that there was a request for recounting earlier. The application is very vague. No irregularity is mentioned. The petitioner has filed to prove issue Nos. 4 and 5.

76. The learned counsel for the first respondent placing reliance on the decision of the Hon'ble Superme Court reported in **AIR 1965 SC page 1557,** submitted that in order to determine whether or not a particular caste is a Scheduled Tribe within the meaning of Article 342 of the Constitution of India, one has to look to the presidential order. The Election Tribunal can determine whether or not a candidate belongs to a particular caste which is included in the Presidential Order. However, it is not permissible for the High Court/Election Tribunal to go into the claim of a candidate that through the caste to which he belongs is not included in the Presidential Order but yet his caste or sub-caste should be deemed to be a particular caste which is infact included in the Presidential Order.

(2) Placing reliance on the decision reported in **(2005) 2 SCC page 244,** the learned counsel for the first respondent submitted that the High Court in an election petition can made an independent enquiry and go into the question of caste of a candidate de-horse the caste certificates produced by the parties and certificates produced by the parties could be used as a piece of evidence and its evidentiary value will have to be assessed in the light of other evidence in the election petition.

(3) Placing reliance on the decision reported in **(2010) 9 SCC page 712,** the learned counsel for the first respondent submitted that so long as the certificate produced by a candidate indicates the caste which is included in the Schedule Tribe order, mere usage of the words such as "Hindu" which is a religion as a prefix to the caste does not invalidate the certificate and the usage of such religion as a prefix should be treated as a surplus age and the substance of the certificate has to be looked into and not the form.

(4) Placing reliance of the decisions reported in **(1996) 3 SCC page 545 and (2010) 9 SCC Page 712,** the learned counsel for the first respondent submitted that the case in which a person is born and brought up and has suffered disabilities attached to that caste and if such caste is included in the Presidential Order, a candidate is entitled to take benefit of such reservation. Mere marriage to a person belonging to another caste which is not include in the Presidential Order will not change the status of person *ipso facto* unless and until it is established that after marriage such person has been accepted into the community of the spouse and observed various customs attached to that community which is not included in the Presidential Order and thereby disentitles the candidate of such benefit of reservation.

(5) Placing reliance on the decisions reported in **& (2008) Vol 2 SCC page 186 and (2011) Vol. 6 SCC page 430**, the learned counsel for the first respondent submitted that inview of section 35 of the Indian Evidence Act, the entries made in the Official and Public documents such as school admission registers regarding caste etc., should be considered as admissible and have high probative valued. Similarly, if the documents are in existence for a long period of time, a presumption is raised in favour of such documents under section 90 of the Evidence Act.

(6) Placing reliance on the decision reported in **(2000) Vol. 8 SCC page 46,** the learned counsel for the first respondent submitted that the inclusion or deletion of a person's name from the electoral roll cannot be agitated in an election petition nor is it a ground for setting the election of a returned candidate.

(7) Placing reliance on the decision reported in **(2004) 6 SCC page 341, 1984 (Supp.) SCC page 157 and (2002) 1 SCC page 160,** the learned counsel for the first respondent submitted that so long as the total number of votes polled and the total number of votes counted tally and remain undisputed, mere discrepancies in making certain entries in forms which are attributable to accidental slips or clerical mistakes, neither recount can be ordered nor the election of a retuned candidate can be set-aside. The election petitioner must plead and prove as to how such discrepancies have materially affected the result of the election of the returned candidate.

(8) Further placing reliance on the decisions reported in **(1985) 1 SCC page 91 and (1996) 1 SCC page 399**, the learned counsel for the first respondent submitted that an allegation of corrupt practice is quasi-criminal in nature and is required to be established beyond any reasonable doubt and not an preponderance of probabilities. Consent of a candidate or his election agent is the lifeline to establish the link between the candidate and the person who has committed the corrupt practice.

(9) Further placing reliance on the decisions reported in **AIR 1999 SC page 3655** and **AIR 1975 SC page 290,** the learned counsel for the first respondent submitted that in an election dispute court should be slow in believing the oral evidence on its face value without the backing of sure circumstances or indubitable documents. If two views are possible – one in favour of the returned candidate and the other against him/her – courts should uphold the election instead of setting aside the election.

77. The learned counsel for the second respondent submitted that the first respondent is a "Boya" which is not a Scheduled Tribe. "Boya" is a backward class. "(Hindu) Valumiki" is not a Schedule Tribe under the Presidential Order. The votes polled in favour of the first respondent are invalid votes. If the counting was proper the second respondent would have secured the highest number of votes. Therefore, the second respondent may be declared as elected.

78. In reply, the learned counsel for the petitioner submitted that to raise and objection regarding caste no caste certificate is required. Obtaining of the caste certificate subsequently will not invalidate the objection. Mere production of the document is no proof and no evidence is adduced to prove the documents. Further he submitted that no co-villager is examined. The first respondent should have produced the admission register of the first standard. Even if a finding is recorded that the first respondent belongs to Valmiki, then also, it is of no consequence. The first respondent was not qualified to contest the election. He invited my attention to the evidence of RWs. 1,2,3,10,11,29,32,34,35,36,39,40,41,43,44,45,46,47,48,54,57,58 and 60 regarding counting irregularity. He also submitted that unless the EVM number is mentioned in Form No. 17C Part I, it is difficult to say which EVM was used. Form No. 17C Part I and Part II must go together and there was no need for separate Form No. 17C Part I and Part II. He, therefore, submitted that the election petition may be allowed.

79. I have carefully considered the submissions made by the learned counsel for the parties and perused the material on record.

80. My findings and reasoning on the issues raised for consideration are as follows;

Issue No.1 E.P.No.4 and E.P.11/2009

81. It is contended by the petitioners that 9 – Bellary Parliamentary Constituency is reserved for Schedule Tribe. The Respondent No.1 does not belong to Schedule Tribe. She belongs to Boya caste which is a backward caste. The first respondent contested the election showing herself as (Hindu) Valmiki. The caste certificate obtained by the first respondent is a false certificate. The certificate issued by the Tahsildar, Guntakal Mandal, shows that the first respondent belong to Boya caste which is classified as backward caste both in Karnataka and Andhrapradesh. The first respondent has obtained false certificate from the Tahsildar, Bellary, stating that she belongs (Hindu) Valmiki." There is no entry called (Hindu) Valmiki which is classified as Schedule Tribe under the constitution (Schedule Tribe) order 1950. The respondent No.1 cannot claim the benefit of Constitution (Scheduled Tribes) order 1950.

82. The first respondent has denied that she belongs to 'Boya' caste and she has obtained false certificate, It is contended that the first respondent was born at Bellary and she belongs to 'Valmiki' caste and her parents also belong to Valmiki caste. The first respondent has placed reliance on the certificates issued by the school and college authorities. She has denied the caste certificate issued by the Tahsildar, Guntakal, as fabricated document.

83. P.W.1 has deposed that the caste certificate issued by the Tahsildar Guntakal shows that the first respondent belongs to 'Boya' caste. The caste certificate issued by the Tahsildar, Bellary, is a false certificate. 'Boya' is not a Schedule Tribe.

84. In his cross- examination, P.W.1 has stated that the first respondent was residing at Guntakal. At the time of filing nomination and scrutiny on the basis of his personal knowledge he told that the first respondent was residing at Guntakal. It is true, at the time of scrutiny he had no house number, voters` list, ration card and caste certificate of Smt. J. Shantha i.e., the first respondent. He obtained house list number, voters list, ration card and caste certificate two days after the scrutiny. Further he has stated that he was aware of the procedure to obtain certificate from the Tahsildar. By applying to jurisdictional Tahsildar, certificate pertaining to other persons can also be obtained. Ex.P.6 was given to him by one Mahesh Kumar. He told him that Ex.P.6 is the caste certificate of Smt. J. Shantha i.e., the first respondent. He does not know how Mahesh Kumar obtained Ex.P.6. He has denied the suggestion that the caste certificate can be obtained only by the person concerned and not others. Further he has stated that he knows the brothers of the first respondent i.e., Sri. B. Mallikarjuna and Sri B. Sriramulu and he does not know the parents of the first respondent. He has denied the suggestion that the parents of the first respondent belong to Valmiki community. He is not aware whether the first respondent studied at Bellary and in the school certificate of the first respondent it is shown as Valmiki. He has denied the suggestion that the first respondent has born in Valmiki community and he is aware of it . He has stated that he knows Sri B. Sriramulu is the brother of first respondent and he is elected from Bellary Rural Assembly Constituency. He is not aware whether Bellary Rural Assembly Constituency is reserved for ST and Sri B. Sriramulu is elected from Bellary ST Assembly Reserved Constituency and whether Sri B. Sriramulu contested from Bellary ST Reserved Constituency as he belonged to Valmiki community.

85. P.W.4 has deposed that the first respondent is a resident of Guntakal town and she belongs to Boya caste which does not come under ST category. The petitioner was trying to get the documentary evidence. Therefore, he made an application before the Tahsildar Guntakal for issuance of caste certificate and resident certificate of the first respondent and they were issued on 8th and 9th of April 2009.

86. In his cross- examination, P.W.4 has stated that he knows the procedure to obtain the caste certificate and resident certificate. If an application is made to the Tahsildar with name and address, he will issue the caste and resident certificates. He applied to obtain the caste and resident certificates of the first respondent. But, he cannot give the details. He gave application on 4-4-2009. In his application, he has not mentioned that Smt.J.Shantha i.e., the first respondent belongs to Boya caste. He has not produced the copy of the application given by him to the Tahsildar, Guntakal. He had the copy, but he has lost it. He has denied the suggestion that except parents, guardian and concerned person, no others can ask for caste or resident certificates. He has also denied the suggestion that the first respondent belongs to Valmiki caste and first respondent was resident of Bellary since considerable time.

87. P.W.6 has stated that he is working as a Tahsildar, Bellary Taluk, since 15-2-2010. In Bellary Revenue Taluk, there are two assembly constituencies. He has produced the original application filed by Smt.J.Shantha for issue of caste and income certificate and it is marked as Ex.P-58. After the application was submitted by the first respondent, the Tahsildar called for the report from the Revenue Inspector and the Village Accountant, Bellary. It is marked as Ex.P.58(a). As per the procedure, before issuing caste certificate, report must be called for from the Revenue Inspector and the Village Accountant. He cannot say whether Ex.P-58 was received in their office. When application for issue of caste certificate is submitted, it will be entered in the inward register. Thereafter, it will be forwarded to the Revenue Inspector for report. After report is received, the concerned clerk will put up the papers for his signature. Then the Tahsildar will issue the certificate. Ex.P-59 is the report submitted to the Revenue Inspector

on 21-3-2009. The seal in Ex.P-59 bearing date 8-6-2009 is put by mistake instead of putting on the application filed by one D.Ganganna seeking information under the Right to Information Act. The Tahsildar has called for the report on 21-3-2009. They have furnished the documents to Sri.D.Ganganna as requested by him in his application dated 3-6-2009 and the documents were furnished on 8-6-2009. Ex.P-60 is the Revenue Inspector`s report. Along with the application, the first respondent Smt.J.Shantha has produced Ex.P.61- Xerox copy of the identity card, Ex.P.62 - Xerox copy of the application submitted to the Assistant Electoral Registration Officer. Ex.P.63 – Xerox copy of the acknowledgement issued by the District Industrial Centre, Ex.P.64 - Xerox copy of the employment exchange registration card Ex.P.65 - Xerox copy of the conduct certificate issued by the Head Master, VDHL High School, Bellary, Ex.P.66 - Xerox copy of the study certificate issued by the Principal, ASM PU College for Women, Bellary, Ex.P.67 - Xerox copy of the character certificate issued by the Member, City Municipal Council, Bellary, Ex.P.68 - Xerox copy of the income certificate issued by the Tahsildar, Bellary, Ex.P.69 - Xerox copy of the interview letter dated 18-1-2002 sent by the District Court, Koppal, Ex.P.70 - Xerox copy of the Transfer Certificate issued by the Head Master, VDHL High School, Bellary, Ex.P.71 - Xerox copy of the caste certificate issued by the Tahsildar, Bellary, Ex.P.72 - Xerox copy of the Transfer Certificate issued by the Principal, ASM PU College for women, Bellary, Ex.P.73 - Xerox copy of the resume of Smt.J. Shantha Ex.P.74 - Xerox copy of the SSLC marks card of Smt.J.Shantha, Ex.P.75 - Xerox copy of the panchanama report of the Revenue Inspector, Bellary, Ex.P.76 - is the register relating to issue of caste certificate. He has stated that he was not working at the time when the caste certificate was issued to Smt. J.Shantha, the first respondent. At that time, one Sri.R.Venkatesh was the Tahsildar of Bellary Taluk. The relevant entry relating to issue of caste certificate of Smt.J.Shantha, the first respondent, is at Sl.N0.8 and it is marked as Ex.P.76(a).

88. In his cross-examination, PW.6 has stated that the caste certificate is issued after reference to the notification. It is true, in Ex.P-4 in Part VI the names of Scheduled Tribes are enumerated. The copy of the notification is available in their office. Ex.P-4(b) does not contain (Hindu) Valmiki It is true (Hindu) Valmiki is not included in Scheduled Tribe. Ex.P-5 is issued from their office. In Ex.P-5, the caste is mentioned as (Hindu) Valmiki. In Ex.P.73, the caste is mentioned as (Hindu) Valmiki. Ex.P.58 is submitted by Smt.J.Shantha for issue of caste certificate. In Ex.P.5, 'Hindu' which is mentioned within bracket refers to religion and 'Valmiki' refers to caste.

89. PW.7 has deposed that he is working as Tahsildar, Guntakal, since 15-6-2009. After the receipt of the summons, he searched for the documents mentioned in the summons i.e., copy of the caste certificate issued on 8-4-2009, and copy of the residence certificate issued on 9-4-2009, but he did not trace them. Ex.P-77 is the Caste Certificate Register. It shows that they have issued certificate to Smt.J.Shantha wife of Nagaraj. It is at Sl.No. 1663 and marked as Ex.P-77(a). The next column shows caste. It is marked as Ex.P-77(b). Ex.P-77(b) shows that caste certificate is issued as Boya. The certificate is issued to Smt.J.Shantha. It is true, Sl.No.1663 is over written. Earlier it was Sl.No.1683. There is only one entry in Ex.P-77 regarding issue of caste certificate to Smt.J.Shantha. Ex.P.9, the residence certificate is issued from their office. The entry is at Sl.No.1688 in Ex.P-77. It differs from the number mentioned in Ex.P-9. As per the register, exhibits P-6 and P-9 have been issued under one number. Ex.R-1 is issued from their office. In Ex.R-1, he cannot say whether entry No.354 relates to the first respondent Smt.J.Shantha as there is no photograph. The house number given at Sl.No.354 in Ex.R-1 and the house number given at Ex.P-77(a) are one and the same. As per Ex.R-1 as on 22-1-2009, Smt.J.Shantha was the voter of Gunthakal general constituency.

90. In his cross-examination, PW.7 has stated that in Andhra Pradesh, there is an Act called A.P. (SC,ST & BCs) Regulation of issue of Community Certificates Act 1993. Rules are also framed under the said Act. As per the provisions of the said Act and the Rules, the applicant himself or his parents or guardian can ask for the certificate. A person has to apply in form No.1 to obtain caste certificate of ST. He does not know who has made application for issuance of caste certificate of Smt.J.Shantha. He has not verified the inward register to find out as to who has made application for issuance of caste certificate of Smt.J.Shantha. From Ex.P.77, he cannot say as to who has made application for issuance of caste certificate of Smt.J.Shantha. It is true, the entry at Sl.No.1688 is a certificate issued in favour of one K.Gopal and the entry at Sl.No. 1683 is a certificate issued in favour of one Smt.Pushpalatha. Ex.R.4 is the application dated 22-9-2010 filed by one Patel Siddareddy, Advocate, under the

Right to Information Act. It bears the seal of their office, It is true, he has issued endorsement as per Ex.R-5 in response to the application Ex.R-4, In Ex.R-5, it is stated, the certificate issued to Smt.Shantha is a temporary certificate. Ex.P-6 is the temporary certificate which he has referred to in Ex.R-5. He cannot say whether the certificate at Sl.No. 1663 is issued to Smt.J.Shantha or not. Ex.P-77 does not reflect as to who has received the certificate. He does not know whether Smt.J.Shantha has applied for issuance of caste and residence certificates. It is true in Ex.R-5 it is mentioned on 9-3-2009 the surrender certificate was issued to the applicant. The document shown to him is the surrender certificate which is marked as Ex.R-6, Ex.R-7 is the certified copy of the fair price shop key register extract. In Ex.R.7 it is reflected, the husband of Smt.Shantha has surrendered the household supply card.

91. P.W.11 has deposed that all the nominations will be submitted to the Returning Officer. After the receipt of nomination papers, to find out whether the candidates are eligible to contest the election or not, scrutiny will be done. To contest the election the candidates must be the voter of the constituency. As the constituency was reserved for S.T. candidates, only persons belonging to S.T. can contest the election. To find out whether the candidate is the voter of the constituency, he will check up from the electoral roll. The candidate is required to produce the caste certificate. Based on that, the decision will be taken whether the candidate belongs to S.T. or not. The Tahsildar is the competent authority to issue the caste certificate. An objection was raised by the Advocate of the second respondent regarding the nomination of the first respondent on the ground that the caste certificate is not valid and the first respondent does not belong to S.T. or Naika caste and the first respondent belong to Boya caste and she is not the resident of Bellary. After hearing the parties and based on the document, the objection was over-ruled. Based on the caste certificate and copy of the electoral roll, he has taken a decision that J.Shantha i.e., first respondent belongs to S.T.

92. In his cross-examination, P.W.11 has stated that at the time of scrutiny of nomination papers presidential order was not with him, but he was aware of the presidential order. In Ex.P.4 Presidential order, the Schedule Tribes in Karnataka are shown in Part VI and it is marked as Ex.P4(a). It is true that 'Valmiki' is Schedule Tribe in Karnataka as per Ex.P4(b). In Ex.4(b), (Hindu) Valmiki is not there. In Ex.P.5, the Caste is mentioned as (Hindu) Valmiki. While scrutinizing the nomination papers of the first respondent, he did not verify the caste mentioned in the caste certificate with reference to the presidential order Ex.P.4. He has denied the suggestion that though he was aware that (Hindu) Valmiki was not the Schedule Tribe, at the behest of Mr. Sriramulu, the brother of the first respondent, he has accepted (Hindu) Valmiki as Schedule Tribe.

93. Ex.P.4 is the Presidential order i.e., the constitution (Schedule Tribe) order, 1950. In Ex.P.4 the entry relating to Karnataka is at Part-IV i.e., Ex.P.4(a). The relevant entry is at Ex.P.4(b). Naikda, Nayaka, Chollivala Nayaka, Kapadia Nayaka, Mota Nayaka, Nana Nayaka, Naik, Nayak, Beda, Bedar and Valmiki are shown as Schedule Tribe.

94. Ex.P.5 is the caste certificate issued by the Tahsildar, Bellary. It shows that the first respondent belongs to (Hindu) Valmiki S.T.

95. Ex.P.6 is the caste certificate issued by the Tahsildar Guntakal Mandal. It shows that Smt. Shanthi belongs to 'Boya' caste which is recognised as backward class BC-A.

96. Ex.P.9 is the resident certificate issued by the Tahsildar Guntakal Mandal, Anantapur District. In Ex.P.9, it is shown that Smt.Shantha is residing at 13/165 of Guntakal, Anantapur District.

97. R.W.128 is the incharge Principal in Smt. Allam Sumangalamma Memorial P.U.College, for women Bellary. He has deposed that he is working as incharge Principal in Smt. Allam Sumangalamma Memorial P.U.College, for women Bellary. He has produced book No.3 which contains applications for admission and documents relating to admission. Book No.3 is marked as Ex.R-15. The application of the 1st respondent-J.Shantha for admission is at Sl.No.99 which is marked as Ex.R-16. At the time of admission as per Book No.3, J.Shantha has produced S.S.L.C. original T.C. and xerox copy of the T.C. and SSLC marks card. He has brought the relevant page of admission register (Page Nos.8-9), which is marked as Ex.R-17. The entry relating to J.Shantha is at Sl.No.99. It is marked as Ex.R-17(a). In Ex.R-17, the caste of J.Shantha is shown as Valmiki. It is marked as Ex.R-17(b). In the application Form Ex.R-16, the caste of J.Shantha is mentioned as Valmiki. It is at Ex.R-16(a) and R-16(b). Copy of the Transfer Certificate relating to J.Shantha is at Sl.No.615. It is marked as Ex.R-18.

98. In his cross-examination, R.W.128 has stated that the 1st respondent has not produced the caste certificate at the time of admission. The 1st respondent has produced her Transfer Certificate along with the application for admission. It is marked as Ex.R-19. In Ex.R-19, column No.9 is left blank. In column No.10, it is mentioned as Hindu-Valmiki. Ex.R-18 was issued on 5-3-2009. Ex.R-18 is the only TC issued to Smt.J.Shantha.

99. RW.129 has deposed that she was working as in charge Head Mistress at VDHL Girls High School, Siruguppa road, Bellary. Ex.R-20 is the application for admission of Smt.J.Shantha, the 1st respondent for 8th standard. Ex.R-21 is the Transfer Certificate of Smt.J.Shantha, the 1st respondent. She has brought the admission register for the years 1988-89 to 1996-97 which is marked as Ex.R-22. The relevant entry relating to Smt.J.Shantha, the first respondent is at Ex.R-22(a). The caste of Smt.J.Shantha is shown as Valmiki. It is marked as Ex.R-22(b).

100. In her cross-examination, RW.129 has stated that she does not know who has filled up the contents of exhibits R.20 and R.21. She does not know whether the contents of Ex.R.20 are correct or not. In Ex.R.22 at Sl.No.1999 relating to one Smt.Shantha the caste is shown and it is also shown that it comes under Schedule caste. It is marked as Ex.R-22(c). It is true, In Ex.R-22 caste is indicated. In Ex.R-22 at Sl.No. 1600 relating to D.Damayanthi, the caste is indicated as Adikarnataka and it belongs to SC is also indicated. It is marked as R-22(d). In Ex.R-22 at Sl.No. 1601 relating to S.J.Meenakshi, the caste is shown as Adikarnataka. It is also indicated, it comes under SC.

101. RW.132 i.e., the first respondent has deposed that she was born on 1-6-1973 at Bellary to J.Thimmappa & Vannuramma. Her parents belong to 'Valmiki' caste. They were initially residents of Joladarashi village, Bellary taluk. Her father was working as a Railway Parcel Porter at Bellary. She studied in Government Higher Primary School, Sasthrinagar, Bellary, up to 7th standard. Thereafter she studied in Sri Vitta Dodda Hanumanthappa Lingamma High School for Girls, Parvathinagar, Bellary, upto 10th standard. Exhibits R.20 and R.22 are the documents. She studied Pre-University Course in Smt.Allum Sumangalamma Memorial College for Women, Bellary and documents evidencing the same are marked as Exhibits R.16 and R.17. She did not complete II PUC. In all her school and college records, her caste is shown as Valmiki. She has availed the benefits of ST including reservation. She has obtained caste certificate from the Tahsildar, Bellary, in the year 1996 for the purpose of claiming reservation in employment under ST category as per Ex.P.71. She was married to one Nagaraju who was a resident of Guntakal in Andhra Pradesh. Her husband did not have any regular avocation for livelihood and therefore, they were shuttling between Guntakal and Bellary. She normally used to reside in Bellary at different places along with her parents and brother B.Sriramulu, who is presently a Member of Karnataka Legislative Assembly from Bellary Constituency which is reserved for Scheduled Tribes. Even after her marriage, she continued to live at Bellary and follow the customs, traditions and practices of 'Valmiki' caste. She has stated, she is the permanent resident of Bellary and her name is duly registered as a voter of Bellary City Assembly Segment as per Ex.P.81. She belongs to 'Valmiki' caste, which is a Scheduled Tribe, as per the caste certificate issued by the Tahsildar, Bellary, vide Ex.P.5 The caste certificate is issued and her name is included in the voters list in accordance with law. She has stated, that she has seen the form of caste certificate i.e., Ex.P.6 for the first time after service of notice in the election petition. She has not filed any application for issuance of any caste certificate before the Tahsildar, Guntakal Mandal, Ananthpur District. The caste certificate issued as per Ex.P.6 is obtained behind her back fraudulently and by furnishing false information. She is not aware as to how the said document has come into existence and at whose instance and how the petitioner has obtained and produced it before the Court. She has stated, she has never given any declaration that she belongs to 'Boya' caste before any authority or person at any point of time. She has seen the resident certificate vide Ex.P.9 for the first time after service of notice in the election petition. She has not filed any application for issuance of any resident certificate before the Tahsildar, Guntakal Mandal Ananthpur District. The resident certificate issued as per Ex.P.9 is obtained behind her back fraudently and by furnishing false information. She is not aware as to how the said document has come into existence and at whose instance and how the petitioner has obtained and produced it before the Court.

102. In her cross-examination, RW.132 has stated that her father belongs to Valmiki caste based on the caste certificate furnished by her father when he joined service. She has not seen the caste certificate of her father. She has denied the suggestion that her father had not joined service by furnishing the caste certificate as Valmiki. B.Mallikarjun who has signed Ex.R.20 as guardian is her elder brother. 'B' stands for Bellary or Beda. She cannot say exactly whether 'B' stands for Bellary or Beda. Other than the caste certificate issued by the Tahsildar, her caste is shown as Valmiki in her school records. In her brothers certificates also, the caste is shown as Valmiki. The cousins of her father are working as Talwaras even now also. Only Valmikis discharge the duties of Talwaras. She can produce the documents to show that her relatives are working as Talwaras. Ex.R.20 is the application form of her admission to V.D.H.L. School at Bellary. Her brother B.Sriramulu is her fourth brother. 'B' stands for Beda or Bellary. the initial of all her brothers is 'B'. She has denied the suggestion that the initial 'B' stands for Boya caste and not Beda or Bellary. She has denied the suggestion that till the year 2005 when she shifted to Bellary, she was residing at Guntakal. Her husband Nagaraj used to stay at Bellary and also at Guntakal. From 1994 till 2005, herself or her husband have not voted in any election at Guntakal. She does not know whether her name or her husband`s name was included in the voters list of Guntakal constituency. She does not know whether her name or her husband`s name was included in the voters list at Bellary from 1994 till 2005. She knows Boya caste. It is also called Beda, Bedar, Valmiki and Nayak. Her father`s full name is J.Thimappa. 'J' means Joladarashi. Her name is J.Shantha. 'J' means Joladarashi. it is true that the caste of her husband and herself is one and the same and therefore, she married. Her husband`s name is B.Nagaraju. 'B' means Boya. Ex.R-9 is given by her husband. She has signed Ex.R-9. She has denied the suggestion that her family name is Boya. She has stated in Ex.R-9 the family name is mentioned as Boya and Ex.R-9 was filled up by her husband. The signature in Ex.R.10 is the signature of her husband. In Ex.R-10, the family name is shown as Boya.

103. Ex.R.21 is the Transfer Certificate issued by the Government Higher Primary School, Bellary. In column No.7 meant for religion the caste is shown as "Valmiki".

104. Ex.R.20 is the application submitted by the first respondent for admission to 8th standard. The caste is shown as "Valmiki".

105. Ex.R.22 is the admission register book for the years 1988-89 to 96-97. The relevant entry relating to 1st respondent is at Ex.R.22(a). The caste is shown as "Valmiki". It is at Ex.R.22(b).

106. Ex.R.16 is the application for admission to PUC in Smt. Allam Sumangalamma Memorial P.U. College, for women Bellary. The caste is shown as "Valmiki". and it is at Ex.R.16(a).

107. Ex.R.19 is the Transfer Certificate issued by the Head Master of Sri Vitta Dodda Hanumanthappa Lingamma High School for Girls Parvathinagar, Bellary. In column No.7 meant for religion the caste is shown as "Valmiki".

108. Ex.R.17 is the admission register extract of Smt Allam Sumangalamma Memorial P.U. College, for women Bellary. The entry relating to the first respondent is at Sl.No.99. It is marked as Ex.R.17(a). The caste is shown as "Valmiki". and it is at Ex.R.17(b).

109. Ex.R.15 is book No.3 which contains applications for admission and documents relating to admission. The application of the first respondent is marked as Ex.R.16. In Ex.R.16, the caste is shown as "Valmiki". and it is at Ex.R.16(a).

110. Ex.R.18 is the Transfer Certificate issued by the Principal of Smt. Allam Sumangalamma Memorial P.U. College, for women Bellary, In Column No.9, it is shown as " (Hindu)Valmiki".

111. Ex.P.58 is the application submitted by the first respondent for issue of Caste Certificate on 19-3-2009. In Ex.P.58, It is shown the first respondent belongs to "Valmiki" caste. Exhibits P.59 to Ex.76 are supporting documents.

112. Ex.P.59 is the report of the Revenue Inspector, Bellary. In Ex.P.59 it is mentioned that the first respondent and her parents belong to " (Hindu)Valmiki".

113. Ex.P.60 is the recommendation of the Revenue Inspector for issue Caste Certificate to the first respondent as "Valmiki".

114. Ex.P.64 is the Employment Exchange Card which shows that the first respondent belongs to the Schedule Tribe.

115. Ex.P.71 is the Caste Certificate of the first respondent issued for the purpose of employment. It is shown that the first respondent belongs to " Valmiki" which is a Schedule Tribe.

116. Ex.P.73 is the Resume of the first respondent. The caste is shown as " (Hindu)Valmiki".

117. Ex.P.75 is the Mahazar drawn by the Revenue Inspector. It is shown that the first respondent and her parents belong to "(Hindu)Valmiki" caste.

118. The petitioner contends that the first respondent belongs to Boya caste and not to Valmiki caste.

119. Ex.P.6 is the caste certificate issued by the Tahsildar, Guntakal. It shows that the first respondent belongs to Boya caste.

120. Ex.P.7 is the gazette issued by the Government of Karnataka showing Boya as backward class.

121. Ex.P.5 is the caste certificate issued by the Tahsildar, Bellary, on 2-4-2009. It shows that the first respondent belongs to (Hindu) Valmiki ST.

122. Ex.R.9 is an application filed by the first respondent for deletion of her name from the electoral roll of Guntakal. Her family name is shown as Boya.

123. Ex.R.6 is the surrender certificate of ration card of Guntakal. The name of the respondent`s husband is shown as B. Nagaraju.

124. In her cross-examination the first respondent has stated that the caste of her husband and herself is one and the same and therefore, she married. Her husband`s name B.Nagaraju. 'B' means 'Boya'

125. In Ex.P.4, at entry No.38, (Hindu) Valmiki does not find place. It is only 'Valmiki' which finds place.

126. The first respondent contends that her parents belong to 'Valmiki' caste and she was born and brought up in Valmiki community.

127. Ex.R-21 is the Transfer Certificate issued by the Government Higher Primary School, Bellary. It shows that the first respondent was admitted to school during 1979-80. Her caste is 'Valmiki'

128. Ex.R20 is the application filed by the first respondent for admission to High School in the year 1988. In the application, the caste is shown as 'Valmiki'

129. Ex.R.22 is the admission register for the years 1988-89 to 96-97. The caste of first respondent is shown as "Valmiki". It is at Ex.R.22(b).

130. Ex.R.19 is the Transfer Certificate of first respondent issued by the High School for having studied from the year 1988-89. The caste is shown as 'Valmiki'.

131 Ex.R.16 is the application for admission to P.U. course in the year 1991. In Ex.R.16, the caste is shown as 'Valmiki'.

132. Ex.R.17 is the admission register of Smt. Allam Sumangalamma Memorial P.U. College, for women Bellary. The caste of the first respondent is shown as 'Valmiki' at Ex.R.17(b).

133. Ex.R. 18 is the transfer certificate issued by the Pre-University College showing the caste of the first respondent as 'Valmiki'.

134. Ex.P.71 is the caste certificate issued by the Tahsildar, Bellary, in the year 1996. The caste of the first respondent is shown as 'Valmiki'.

135. Ex.P.64 is the employment exchange registration card. it shows that the first respondent belongs to Schedule Tribe.

136. Ex.P.5 is the caste certificate issued on the basis of the application submitted by the first respondent as per Ex.P.58.

137. Exhibits R.21, R.22, R.19, R.17, P.64 and P.71 are official records maintained in the usual course. They are in existence since long time. Exhibits R.21, R.20, R.22, R.16, R.19, R.17 and exhibit P.71 clearly show that the first respondent belongs to 'Valmiki' caste.

138. Ex.R.16 is the application filed by the first respondent seeking admission to Pre-University College on 21-6-1991. In the application, there is a specific column to claim reservation under Scheduled Caste and Scheduled Tribe . The first respondent has claimed reservation by mentioning her caste as 'Valmiki' which is at Ex.R.16(a).

139. The first respondent in her application for issue of caste certificate has stated that she belongs to "Valmiki" caste.

140. Ex.P.59 is the report of the Revenue Inspector. It shows that the parents of the first respondent belong to (Hindu) Valmiki community. After the receipt of the report, the Tahsildar has endorsed on the back of the application as per Ex.P.58(a) to issue caste certificate as 'Valmiki', However, while issuing the caste certificate Ex.P.5, the word 'Hindu' is added. Exhibits P.58 to P.74 are the documents in support of the claim that the first respondent belongs to 'Valmiki' community. Ex.P.71 is the caste certificate issued in the year 1996. It shows that the first respondent belongs to 'Valmiki' caste and it is a Scheduled Tribe. The documents produced by the first respondent show that the first respondent belongs to 'Valmiki' caste.

141. the A.P. (SC, ST & BC`s) Regulation of issue of Community Certificates Act, 1993 and Rules, provide for issuance of caste and resident certificate in the State of Andhra Pradesh. Sec.3 of the A.P. Act and Rule 4 provide that only the person/parents/guardian who desires to obtain/claim reservation alone can make an application in the prescribed Form.

142. The petitioners rely upon Ex.P.6 caste certificate issued by the Tahsildar, Guntakal, to contend that the first respondent belongs to Boya caste. P.W.1 in his cross-examination has stated that Ex.P.6 was given to him by P.W.4 Mahesh Kumar. He does not know P.W.4 Mahesh Kumar obtained Ex.P.6 P.W.4 has stated that he made an application on 4-4-2009 and he has lost the copy of the application. In his cross-examination, P.W.4 has stated that any person can make an application by specifying the name and address of the person whose caste certificate is required and Tahsildar will issue the caste certificate and resident certificate. When the Act and Rules provide that only a person concerned, his parents or guardian can make an application, it is difficult to believe how P.W.4 can obtain the caste certificate of the first respondent.

143. P.W.7 is the Tahsildar, Guntakal. In his evidence he has stated the procedure for making an application to obtain the caste certificate and the resident certificate. He has also stated that he is not aware who made an application to obtain the caste certificate Ex.P.6

144. Ex.P.77 is the register maintained by the Tahsildar Guntakal showing issuance of caste certificate. It is stated that the certificate was issued under Entry No.1663 which is marked as Ex.P.77(b). If the entry in Ex.P.6 is compared with the entry at Ex.P.77(b) the number is different. In Ex.P.6 the number is mentioned as No. 1683. In Ex.P.9 the number is mentioned as No. 1688. In Ex.P.77, the entry at 1683 refers to one Pushpalatha and the entry at 1688 refers to one Gopal.

145. Ex.R.4 is the application filed by one Patel Sidda Reddy, advocate, who represented the 1st respondent at the time of scrutiny seeking information regarding Exs.P.6 and P.9 as to who made an application for issuance of Ex.P.6 and Ex.P.9. In response to that , the Tahsildar, Guntakal, has issued an endorsement as per Ex.R.5 stating that there is no record available as to who made an application and the certificates exhibits P.6 and Ex.P.9 are temporary certificates. The Tahsildar Guntakal i.e., P.W.7 has admitted this in his evidence.

146. P.W.4 has deposed that he applied for the caste certificate and the resident certificate. As per the rules, it is the concerned person or his parents or guardian who can apply for issuance of caste certificate. P.W.4 has stated that he has lost the copy of the application. The Tahsildar has stated that it is not clear who made the application. P.W.4 in his cross-examination has stated that he has not mentioned that Smt.J. Shantha i.e., the first respondent belongs to Boya caste in his application. Therefore, the caste certificate Ex.P.6 issued by the Tahsildar Guntakal Mandal cannot be replied upon.

147. The petitioner relies upon on the evidence of P.W.1, P.W.4, P.W.6, P.W.7, and P.W.11 and exhibits P.4,P.6 and P9 and admission of R.W.132 to contend that the first respondent belongs to "Boya" caste. This certificate Ex.P.6 is not obtained in accordance with the Rules and it cannot be relied upon. The evidence of P.W.1, P.W.4, P.W.6, P.W.7, and P.W.11 does not establish that the first respondent belongs to "Boya" caste. The admission of R.W. 132 that the caste of herself and her husband is one and the same and therefore, she married by itself is not sufficient to hold that the first respondent belongs to “Boya” caste. The evidence on record clearly establishes that the first respondent belongs to “Valmiki” caste.

148. Ex.P4 is the Constitution (Scheduled Tribes) Order, 1950. Part VI relates to Karnataka. The relevant entry is at Ex.P.4(b). In Ex.P4(b), the following castes are shown as Scheduled Tribes. Naikada, Nayaka, Chollivala Nayaka, Kapadiya Nayaka, Mota Nayaka, Nana Nayaka, Naik, Nayak, Beda, Bedar and Valmiki. As per the Presidential Order, (Hindu) Valmiki is not a Scheduled Tribe. Only “Valmiki” is a Scheduled Tribe. The Tahsildar, Bellary, has issued caste certificate as (Hindu) Valmiki. It does not conform to the Presidential Order. The Hon’ble Supreme Court in STATE OF MAHARASHTRA vs. MILIND reported in AIR 2001 SC page 393 has held that the entries made in the Presidential Order are to be taken as they are without adding or subtracting anything from the entries. It is not open to the State Government or Court or Tribunals or any other authority to modify, amend or alter the list of Scheduled Tribes specified in the notification issued under clause (1) of Article 342 of the Constitution. In the present case, the caste certificate is issued as (Hindu) Valmiki by the Tahsildar. But, this Court considering the material on record has recorded a finding that the first respondent belongs to “Valmiki” caste. Therefore, though (Hindu) Valmiki is not a Scheduled Tribe as per the Presidential Order Ex. P.4, ‘Valmiki’ is a Scheduled Tribe. In view of the finding recorded by this Court that the first respondent belongs to ‘Valmiki, it can be said that the first respondent belongs to ‘Valmiki’ which is a Scheduled Tribe as per the Presidential Order.

149. Therefore, issue No. 1 answered accordingly holding that the first respondent belongs to Valmiki caste and the petitioner has failed to prove that the first respondent belongs to Boya caste. The first respondent has proved that she belongs to Valmiki caste. Therefore, though the caste certificate Ex.P.5 issued by the Tahasildar, Bellary, does not conform to Presidential Order, as the first respondent belongs to Valmiki Caste, she is a Scheduled Tribe.

ISSUE No. 2 in E.P. No. 4/2009 and 11/2009 :

150. It is contended that the first respondent belongs to Boya caste which is not a Scheduled Tribe. No. 9-Bellary (ST) Parliamentary Constituency is reserved for Scheduled Tribe. As the first respondent belongs to Boya caste, she is not a Scheduled Tribe and therefore, she is not eligible to contest the election from 9-Bellary (ST) Parliamentary Constituency. The nomination of the First respondent has been improperly accepted.

151. The petitioners contend that the first respondent belongs to Boya caste. The petitioners have failed to prove that the first respondent belongs to Boya caste. The first respondent has proved that she belongs to Boya caste. The First respondent has proved that she belongs to Valmiki caste which is a Scheduled Tribe. No. Doubt, Ex.P.5 does not conform to the Presidential Order. But, the fact remains that the first respondent has proved that she belongs to Valmiki caste which is a Scheduled Tribe. At the time of scrutiny of the nomination papers, the second respondent has raised an objection contending that the first respondent is not a Scheduled Tribe candidate and her husband is Boya which is a backward class and therefore, the nomination of the first respondent cannot be accepted. Based on the caste certificate issued by the Tahsildar, Bellary and voters list the Returning Officer has

accepted the nomination of the first respondent. Though Ex.P.5, the caste certificate issued by the Tahsildar, Bellary, does not conform to the presidential order, the material on record shows that the first respondent belongs to 'Valmiki' caste which is a Scheduled Tribe as per the Presidential Order.

152. The learned counsel for the petitioner placing reliance on the decision of the Hon'ble Supreme Court reported in R.Palanimuthu Vs. Returning Officer reported in AIR 1984 SC page 905 submitted that the first respondent does not belong to Scheduled Tribe and therefore, she is not entitled to contest the election and acceptance of her nomination is improper and illegal. I do not find any merit in this contention, for the reason, though Ex. P.5 shows the caste of the first respondent as (Hindu) 'Valmiki', the evidence on record shows that the first respondent is 'Valmiki' by caste which is a Scheduled Tribe as per the Presidential Order.Therefore, there is no merit in the contention that the nomination of the first respondent has been improperly accepted and accordingly, it is rejected. The evidence on record shows that the first respondent belongs to 'Valmiki' caste which is a Scheduled Tribe as per the Presidential Order and therefore, the first respondent was eligible to contest the election from 9-Bellary (ST) Parliamentary Constituency and her nomination has been properly accepted. Issue No. 2 in E.P.No. 4/2009 and 11/2009 answered accordingly.

ISSUE No. 3 in E.P.No. 4/2009.

153. It is contended that the first respondent was not an ordinary resident of Bellary, but she was a resident of Guntakal. To become an ordinary resident of a place, a person has to reside in a place for atleast 180 days and only then his/her name can be included in the electoral roll. The respondent No. 1 is a resident of No. 13/165, Guntakal-Mandal. Ananthpur District, Andhrapradesh State. The first respondent was not an elector in Bellary or in any other parliamentary constituency in India and therefore, not qualified to contest the election.

154. The first respondent has denied that she is a resident of Guntakal. She has contended that she is a resident of Bellary and law does not require any person to reside in any place for a minimum of 180 days to become an ordinary resident of a place and get registered as a voter.

155. PW.1 has deposed, when nomination paper was taken up for scrutiny, the second respondent and the sixth respondent raised an objection contending that the first respondent does not belong to Scheduled Tribe category and therefore, she is not qualified to contest from the constituency reserved for Scheduled Tribes. The First respondent is a resident of Guntakal in Gooty Taluk, Ananthapur District, Andhra Pradesh. She has been registered as a voter in Guntakal Mandal at house NO. 13-165, Guntakal along with her husband Sri B. Nagaraja. Therefore, the first respondent could not and had not been a resident of Bellary town or in any other part of the constituency. The caste certificate issued by Tahsildar, Guntakal shows that the first respondent belongs to Boya caste and the list of voters of Guntakal town shows that the first respondent is registered as a voter in Guntakal.

156. Further PW.1 has deposed that the caste certificate is bogus and her registration as a voter in Bellary town is false. He has stated that the first respondent is not a resident of Bellary and she had no residential qualification to be registered as voter under the registration of electoral rules, 1960. A person should be a resident of a twon or a village for atleast 180 days prior to the date of application for registration as a voter. As on 4.4.2009, the first respondent was a resident of Guntakal as certified by the Tahsildar, Guntakal, in the residence certificate and she was also shown as voter at Guntakal even on 4-4-2009. Therefore, the first respondent could not have been the resident of Bellary and she should not have been registered as a voter in Bellary constituency. He has stated that the first respondent had filed application before the Tahsildar, Bellary, for issue of ration card and no order has been passed on her application. The first respondent is a resident of Guntakal.

157. In his cross-examination. PW-1 has stated that on the basis of his personal knowledge, he can say that Smt. J. Shantha i.e., the first respondent was residing at Guntakal. It is true, at the time of scrutiny, he had no house number, voters list, ration card and caste certificate of Smt. J. Shantha i.e., the first respondent. He obtained the house list number, voters list, ration card and caste certificate two days after the scrutiny. For the suggestion that the first respondent and her family had surrendered

ration card on 9-3-2009 on the ground that they have shifted to Bellary, PW.1 has stated that he is not aware of it. He cannot say when Ex. P.9 was obtained. He is not aware whether it was ordered to delete the name of the first respondent from the voters list in Guntakal as far back as on 21-3-2009. He is not aware whether the first respondent's name was included in the voters list at Bellary even before filing the nomination papers. He has admitted the suggestion that the electoral roll can be updated by making additions and deletions in the voters list till the last date of filing the nomination papers. He has stated, he is not aware whether election for Ananthapur, Parliamentary Constituency of which Guntakal is a segment and Bellary Parliamentary Constituency cannot be held simultaneously. He has denied the suggestion that deliberately he has not produced updated voters list of Guntakal as on the last of filing the nomination. He has stated, he was not aware of the updated voters list of Guntakal segment of Ananthapur Parliamentary Constituency. Further he has stated that he is not aware whether in the updated voters list of Guntakal the name of the first respondent Smt. J. Shantha was deleted as on the last date of filing nomination. He has admitted that Ex.R.1 is the extract of voters list pertaining to Guntakal and he has produced Ex. R.1 to show that Smt. J. Shantha is the voter of Guntakal. He has stated that he is not aware whether there is one more voters list subsequent to Ex.R.1. He is not aware whether one more voters list subsequent to Ex.R.1 was published and the name of the first respondent is deleted. Further he has stated that he does not know which law says that a person should be a resident of a town or a village for atleast 180 days prior to the date of application for registration as a voter. He has denied the suggestion that his statement that Smt. J. Shantha was the resident of Guntakal and not Bellary as on 4-4-2009 i.e., the last date of filing the nomination is not correct. He has also denied the suggestion that Smt. J. Shantha the first respondent was residing at Bellary long prior to the date of filing the nomination.

158. PW.4 in his evidence has stated that Smt. J. Shantha i.e., the first respondent is the resident of Guntakal town and she belongs to Boya caste which does not fall under Scheduled Tribe category. The petitioner was aware of the same and was trying to get the documentary evidence to prove the same. Therefore, he made an application before the Tahsildar, Guntakal, for issuance of Smt. J. Shantha's caste certificate and residence certificate, but they were issued only on 8th and 9th of April, 2009.

159. In his cross-examination, PW.4 has stated that he knows the procedure to obtain the caste certificate and resident certificate. If an application is made with name and address to the Tahsildar, he would issue the caste certificate and resident certificate. He applied to obtain caste certificate and resident certificate of Smt. J. Shantha, but cannot give the details at this length of time. He gave application on 4-4-2009. In his application, he has not mentioned that Smt. J. Shantha belongs to Boya caste. He has not produced the copy of the application given by him to the Tahsildar of Gunthakal. He had the copy, but he has lost it.

160. PW.7 in his eveidence has stated that he is working as Tahsildar, Gunthakal, since 15-6-2009. He searched for the documents namely, copy of the caste certificate issued on 8-4-2009 and copy of the residence certificate issued on 9-4-2009, but he did not trace them. They have maintained a register called Certificate Register which is marked as Ex.P.77. The register shows that they have issued certificate to Smt. J. Shantha, wife of Nagaraj. It is at Sl.No. 1663 and marked as Ex.P-77(a). The next column shows caste which is marked as Ex.P-77(b). Ex.P-77(b) shows that caste certificate is issued as Boya. Ex.P.9-residence certificate is issued by their office. Ex.P.6 is issued by their office. The entry made at Sl. No. 1688 in Ex.P-77 differs from the number mentioned in Ex.P.9. As per the register, exhibits P-6 and P-9 have been issued under one number. Ex.R-1 is issued by their office. He cannot say whether entry No. 354 relates to the first respondent Smt. J. Shantha as there is no photograph. The house number given at Sl. No. 354 in Ex.R-1 and the house number given at Ex.P-77(a) are one and the same. As per Ex.R-1 as on 22-1-2009, Smt. J. Shantha was the voter of Gunthakal general constituency.

161. In his cross-examination, PW.7 has stated he does not know whether Smt. J. Shantha has applied for issuance of caste and residence certificate. He has not verified the inward register before coming to the Court to find out as to who has made application for issuance of caste certificate of Smt. J. Shantha.

162. PW.8 in his evidence has stated that he is working as Assistant Director of Food and Civil Supplies, Informal Ration Office, Bellary. He has not brought the documents mentioned in the summons. They do not have, in their office, the record relating

to the application for ration card by Smt. J. Shantha/Sri Boya Nagaraj, resident of Devinagar, Bellary (town), Bellary. They also do not have the copy of the ration card issued in favour of Smt. J. Shantha/Sri Boya Nagaraj, resident of Devinagar, Bellary (town), Bellary. There is no ration card in Bellary relating to Smt. J. Shantha.

163. In his cross-examination, PW.8 has stated that they have issued ration card to one Shantha, w/o B. Nagaraj and whose daughter is Prasanna lakshmi. At that time, she was residing at ward No. 1, Maruthi Colony, Bellary. The Ration card number issued to Smt. Shantha is BLY 40229278. It is issued on 19-9-2006. If he was summoned to produce the ration card relating to Smt. Shantha, residing in Maruthi Colony, Bellary, he would have produced the document. He has stated, Ex.R.8 is the application made by one Siddareddy, Advocate, for issue of certified copy of the ration card pertaining to Smt. J. Shantha, Along with Ex. R.8, Xerox copy of the ration card of Shantha was furnished.

164. PW.9 has deposed that he is working as Deputy Tahsildar in Tahsildar's Office at Gunthakal. He was not the competent authority to issue the ration card and residence certificate. He joined Tahsildar's office at Gunthakal on 28-9-2009. After assuming office, he was not aware whether any ration card was issued to Smt. J. Shantha, the first respondent or her husband B. Nagaraj. He has brought Surrender certificate which is marked as Ex.P.78. Application of Boya Nagaraju dated 5-3-2009 for issue of surrender certificate is marked as Ex. P.79. Ration card of Boya Nagajaru is marked as Ex. P.80. The procedure to surrender ration card is that the concerned person must make an application. They will verify and then issue surrender certificate.

165. PW.10 has deposed that he is working as Commissioner, City Corporation, Bellary. He was working as Electoral Registration Officer for 9-Bellary Parliamentary Constituency, Bellary. The name of the first respondent Smt. Shantha was included in the electoral roll on 23-2-2009. On 11-2-2009, they opened voters facilitation centre on the direction of the Election Commission of India. The purpose was to facilitate the voters to include their names. Smt. J. Shantha-the first respondent submitted application to include to her name in the voters' list on 13-2-2009. It was published on 14-2-2009 in the notice board. After seven days, they have sent their Bill Collector for verification on 22-2-2009 and the application of Smt. Shantha was accepted on 23-2-2009. To include the name of the voter in the voters' list, an application has to be submitted in Form No. 6. The application submitted by Smt. J. Shantha to include her name in the voters' list is marked as Ex.P.81. Prior to this, the name of Smt. J. Shantha was not included in the voters' list of Bellary constituency. To include the name of a person in the voters' list, he must be an ordinary resident of that place for six months. Based on that, her application was accepted. Ex.P.82 is the register of Form No. 6. The entry relating to Smt. J. Shantha is at Sl.No. 772 and it is marked as Ex.P.82(A). Ex.P.83 is the xerox copy of the ration card of Smt. J. Shantha along with the report of the Bill Collector.

166. In his cross-examination, PW.10 has stated that along with Ex.P81, no enclosures were submitted by the applicant Smt. J. Shantha. He has not verified the original of Ex.P.83. he has not verified whether the report of the Bill Collector is correct or not. Ex.P.83 was a temporary ration card. He does not know how long Ex.P. 83 was valid. He does not know anything about the ration cards. He came to know about Smt. J. Shantha after she became a Parliament Member. The suggestion that the name of Smt. J. Shantha was included in the voters list at the instance of Sri. Sriramulu, the brother of the first respondent is denied.

167. Ex.P.9 is the resident certificate of Smt. J. Shantha, the wife of B. Nagaraju. It shows that Smt. J. Shantha is the resident of No. 13/165 of Guntakal Mandal in Ananthapur District. Ex.P.9 is the certificate issued by the Tahsildar. Gunthakal.

168. RW.132 in her evidence has deposed that she was born on 1-6-1973 at Bellary to J. Thimmappa & Vannuramma. She studied in Government Higher Primary School, Sasthrinagar, Bellary, upto 7th standard. Thereafter, she studied in Sri Vitta Dodda Hanumanthappa Lingamma High Schooi for Girls, Parvathinagar, Bellary, upto 10th standard. She studied Pre-University Course in Smt. Allum Sumangalamma Memorial College for Women, Bellary. She was married to one Nagaraju on 26-8-1994. He was a resident of Gunthakal in Andhra Pradesh. They were shuttling between Gunthakal and Bellary. She used to reside in Bellary at different places along with her parents and brother B. Sriramulu. Even after marriage, she continued to live at Bellary. She permanently shifted to Bellary in the year 2005 and sometime in the month of April 2005. She applied for ration card in

her name and during that time, she was residing at Maruthi Colony, Ward No. 1, Bellary city. After complying with all the formalities, the Department of Food and Civil supplies, Government of Karnataka, have issued the ration card bearing BLY 40229278 on 14-9-2006 as per Ex.P. 83. The name of her husband Nagaraju and her daughter Prasanna Lakshmi were also included in the ration card. Her name was proposed to contest the election as a candidate from Bellary (ST) Lok Sabha Constituency in April/May 2009. She got verified to ensure whether her name is included in the voters list of Bellary (ST) Lok Sabha constituency. After noticing that her name was not included in the voters list, she immediately took steps to get her name included in the voters list and in that regard, she made an application. Her name was included in the voters list for Bellary City Assembly Segment by the Electoral Registration Officer as per Ex.P.81. She was informed that her name was included in Gunthakal Assembly Segment in Andhra Pradesh along with the name of her husband in the general enumeration of voters list. She had no knowledge of the same. Both her husband and herself filed application on 21-3-2009 before the Electoral Registration Officer, Gunthakal Assembly Segment, Andhra Pradesh, seeking for deletion of their names. Based on the said application, the Electoral Registration Officer, Gunthakal Assembly Segment, has passed order deleting their names and their names are deleted as per Ex.R.10. Household card issued to her husband was surrendered and surrender certificate as per Ex.P.78 has been issued by the Tahsildar, Gunthakal, on 9-3-2009. She is the permanent resident of Bellary and her name has been duly registered as a voter of Bellary City Assembly Segment vide Ex. P. 81. She belongs to 'Valmiki' caste which is a Scheduled Tribe. Her name has been included in the voters list in accordance with law and she has been duly qualified to contest the election to Bellary (ST) Lok Sabha Constituency. The resident certificate Ex.P.9 has been obtained behind her back by furnishing false information. She is not aware as to how the said document has come into existence and at whose instance.

169. In her cross-examination, R.W. 132 has stated that the address of her parents at the time of her birth was Devinagar, II Cross, Club road, Bellary. Her parents even now are residing in the said address. She changed her address to Maruthi Colony, Bellary. She was staying in a rented premises. Till her marriage, she was staying with her parents. After her marriage, she shifted to Maruthi Colony, Bellary. She stayed at Maruthi Colony for about 2 or 3 years. Thereafter, she came back to Devinagar, II Cross, Club road, Bellary. Till she was elected, she stayed with her parents. After election, she is staying at S.P. Circle, Bellary. She has denied the suggestion that from 26-8-1994 till the year 2005 when she shifted to Bellary, she was residing at Gunthakal. Her husband Nagaraj used to stay at Bellary and also at Gunthakal. From 1994 till 2005, herself or her husband have not voted in any election at Gunthakal. She does not know whether her name or her husband's name was included in the voters list of Gunthakal constituency. She does not know whether her name or her husband's name was included in the voters list at Bellary from 1994 to 2005. She never voted in any election except in 2009 election when she contested as a candidate. She has stated, when she gave application at Bellary to include her name in the voters list at Bellary, her husband had come to Bellary to reside permanently at Bellary. She does not remember her husband had given application to include his name in the voters list at Bellary. She does not remember after how many days, after giving application, her name was included in the voters list.

170. Ex.P.78 is the surrender certificate. It shows that B. Nagaraju, the husband of the first respondent, has surrendered household supply card bearing NO. WAP.128602500448 in the office of the Tahsildar, Gunthakal, as his family has shifted to Bellary city.

171. Ex.P.81 is the application of the first respondent to include her name in the voters list. It is dated 13-2-2009.

172. Ex.P.82 is the register for inclusion of names in the electoral roll. The relevant entry is at Ex.P.82(a). The application of the first respondent has been accepted on 23-2-2009 to include her name in the electoral roll.

173. Ex.P.83 is the ration card of the first respondent. It shows that the address of the first respondent is Maruthi Colony, Ward No. 1, Bellary. In Ex.P.83, the name of the first respondent's husband Nagaraju and daughter Prasannalakshmi have been included.

174. Ex.R.4 is the application of Sri. Patel Siddareddy, Advocate, for issue of document/information under the provisions of the Right to Information Act. He has sought for information as to who had filed application for obtaining caste certificate and residence certificate of the first respondent Smt. J. Shantha, wife of B. Nagaraju. Whether any verification was undertaken and how the certificate was issued.

175. Ex.R.5 is the endorsement issued by the Tahsildar, Guntakal, to Sri. Patel Siddareddy, Advocate. It is stated, the caste and residence certificate is issued in favour of Shanthi, w/o. Nagaraju, is temporary certificate. No record is available in the office as to who had filed application for issue of certificates. The Mandal Revenue Inspector-1, Gunthakal and Deputy Tahsildar have verified the caste certificate and appended their signatures. On 9-3-2009, the surrender certificate was issued to the applicant after making entries in the connected F.P. shop key register about shifting of family to Bellary.

176. Ex.R.7 is the F.P. shopwise key register proforma. It shows Boya Nagaraju, the husband of the first respondent has surrendered household supply card.

177. Ex.R.9 is the application filed by the first respondent for deletion of her name in the voters list.

178. Ex.R.10 is the application filed by the first respondent's husband B. Nagaraju for deletion of his name from the electoral roll. The names of the first respondent and her husband Nagaraju have been ordered to be deleted.

179. The petitioner contends, the first respondent has made false declaration. Inclusion of her name in the Bellary voters list is illegal. The first respondent is neither a voter in Bellary nor anywhere in India.

180. Part IIB of the Representation of People Act 1950 deals with electoral roll of Parliamentary constituencies . While Part III of 1950 Act deals with the electoral roll of Assembly Constituencies. Section 17 prescribes, a person cannot be registered in more than one constituency. Section 19 deals with conditions for registration. Section 19(b) provides that a person shall be an ordinary resident in a constituency and he shall be entitled to be registered in the electoral roll in that constituency. Section 23 provisdes for inclusion of names in the electoral roll. Section 24 provides for appeals.

181. Rule 26 of registration of electoral rules 1960 provides for inclusion. Rule 27 provides for appeals under section 24.

182. Ex.P.81 is the application made by the first respondent on 13-2-2009 for inclusion of her name in the voters list of Bellary. Along with Ex. P. 81, Ex.P.83 ration card has been produced to show that the first respondent was a resident of Bellary. Ex.P. 82 shows that the decision to include the name of the first respondent was taken on 23.2.2009.

183. Ex.R.9 is the application filed by the first respondent on 21-3-2009 for deletion of her name from the electoral roll at Gunthakal. Ex.R.10 is the application filed by the first respondent's husband for deletion of his name. Ex.R.6 is the surrender certificate of the first respondent's family's ration card at Gunthakal.

184. The documents produced by the first respondent show that she was a resident of Bellary. The first respondent has stated that she was not aware of the inclusion of her name at Gunthaka in the general enumeration of voters list. The inclusion of the name in the voters list or question of ordinary residence cannot be gone into in the election petition. The Hon'ble Supreme Court in **(2000) 8 SCC Page 46** has observed as follows, in para 16 ;

> "The Constitution Bench concluded that wrong decision on a question of ordinary residence for the purpose of entering a person's name in the electoral roll cannot be treated as a jurisdictional error which can be judicially reviewed either in a Civil Court or before an Election Tribunal. The Constitution Bench also held that 1950 Act is a complete code in the manner of preparation and maintenance of electoral rolls. The relief of enrolment, or striking out the name of a person enrolled therein on the ground of his lacking in qualifications conferring a right to be enrolled, must be adjudicated in the manner prescribed by the 1950 Act invoking the jurisdiction of the authorities contemplated therein. The Constitution Bench held that non-compliance with the provisions of Section 19 of the 1951 Act cannot furnish a ground for declaring an election void."

185. Therefore, it is clear that the inclusion of a voter in the voters list or question of ordinary residence cannot be gone into in the election petition. It can be only by way of appeal. The documents produced by the first respondent show that she was the resident of Belllary and her name has been included in the voters list on 23-2-2009. No doubt the name of the first respondent was included in the voters list at Gunthakal also, but it has been deleted. Whether the inclusion of the first respondent's name in the voters list at Bellary is proper or not cannot be gone into in the election petition. However, it is clear that the first respondent was a voter at Gunthakal and it came to be deleted. Her name has been included in the voters list at Bellary on 23-2-2009. So as on the date of filing the nomination she was a voter at Bellary Parliamentary constituency. Therefore, there is no merit in the contention that the first respondent was not a voter anywhere in India as on the date of filing the nomination. The first respondent was a voter at Bellary on the date of filing the nomination. Whether the inclusion of her name in the voters list is proper or improper can be questioned only by way of appeal and not in the election petition. Therefore it is held that the first respondent was a voter on the date of filing the nomination and she was eligible to contest the election. Issue No. 3 answered, accordingly.

ISSUE Nos. 4, 5 and 6 in E.P.No. 4/2009.

186. These issues relate to counting of voters. They are considered together.

187. It is alleged that the 2nd respondent was leading upto 15th round and the lead was about 6,822 votes. From 16th round onwards, the Returning Officer used to receive calls and he used to go to private room to answer the calls. There was no display of votes from 16th round onwards. When the counting of 16th round was going on, suddenly BJP workers started screaming that BJP candidate had won the election. Sri. S.J.V. Mahipal rushed to BJP candidate and informed her that she has won the election by a margin of 2000 and odd votes. The petitioner and his counting agents were confused. There was no announcement of votes counted in 16th, 17th and 18th rounds. The respondent No. 10 had no patience to hear the petitioner or counting agents. All of a sudden, BJP leaders and hundreds of BJP workers shouted slogans that BJP candidate won the election and obstructed the passage. It was not possible for the petitioner or his counting agents to ask anything much less the votes secured by the candidates in 16th, 17th and 18th rounds of counting. The respondent No. 10 declared that the respondent No.1 was elected by securing highest number of votes by a margin of 2243 votes. Neither the petitioner nor his counting agents were given any opportunity to raise objections regarding counting of votes particularly in 16th, 17th and 18th rounds of counting and to seek recounting. The petitioner made fervent request to receive application for recounting. The respondent No. 10 received the application at 5.05 p.m. It was answered after two days stating that the request for recounting cannot be considered. There was no announcement as required under Rule 63 of the Rules, 1961. The entries made in Form No. 17C Part II and Form No. 20 after 15th round of counting were not at all shown to the petitioner or his counting agents. The respondent No. 10 has acted illegally. The EVMs used on the polling day and the EVMs used on the counting day are different. It has materially affected the result of the election.

188. The 1st respondent has contended that the polling and counting process went on smoothly and declaration of result was proper. There was no irregularity or illegality in the counting process. The petitioner had an opportunity to raise objection during the process of counting. But in fact he did not raise any objection. The recounting application was made long after the declaration of the results. The votes counted in the EVMs were the same votes which were cast on the date of polling and there was no tampering. The alleged mistakes or irregularity in Form No. 17C Part I and Part II do not materially affect the result of the election.

189. The petitioner relies upon the evidence of PWs. 1,3,5 and 11 and exhibits P.17 to P.55 and exhibits P.84 to P.225 to contend that there was illegality and irregularity in the counting and the counting was contrary to the rules and Act and it has materially affected the result of the election.

190. P.W. 1 has deposed that the counting of votes took place on 16th May 2009 at Y. Mahabaleshwarappa College of Engineering. Upto the 15th round of counting, the 2nd respondent was leading in all the segments. At the end of 15th round of counting. It was announced that the 2nd respondent would succeed in the election. At that time the Returning Officer used to go away from the counting place to the adjoining room to answer the calls on his mobile phone.

191. The counting staff did not announce the number of votes secured by each candidate in the 16th, 17th and 18th round. The number of votes secured was also not displayed or shown on the screen. The Returning Officer was not present in the counting

hall to explain how and why the votes secured by the contesting candidates was not announced nor displayed on the screen. Whenever the Returning Officer came to the counting hall from the adjoining room he was not in a mood to hear the objection raised by the candidates or the counting agents. He was evasive in his replies and visibly upset. At the end of 18th round of counting, one Sri S.J.V. Mahipal, President of the Bellary district BJP and son of Smt. Basavarajeshwari former Minister in the Central Cabinet rushed into the room in which the Returning Officer was sitting with the first respondent, the petitioner and other candidates and announced that the 1st respondent has succeeded with the margin of 2000 votes. At that time, the votes of Kudligi and Bellary city Assembly segments had not yet arrived at the counting rooms. It was really shocking as to how the results could be announced without counting votes from Kudligi and Bellary city Assembly segments. At that stage, the petitioner along with other candidates and the counting agents raised serious objections and even before they could submit their objections in writing, a huge crowd of BJP supporters assembled in the compound of the counting place and rushed into the counting room. They were beating drums and raising slogans as if they were celebrating the success of the BJP candidate. Astonishingly the Returning Officer summoned the teams of police personnel and prevented the counting agents and the supporters of the second respondent from entering into the premises where the Returning Officer and the first respondent were sitting. In that confusion and utter chaotic situation, the Returning Officer even without tabulating the number of votes in the appropriate Form 20 and even before other candidates and her election agents and counting agents could verify what has been tabulated, the Returning Officer declared that the 1st respondent had succeeded in the election with an unreasonable haste. Further he filled up Form No. 21C and issued the return of election.

192. Further, PW 1 has deposed that the counting of votes is contrary to law. In the first instance the shifting of electronic voting machines from the Y. Mahabaleshwarappa College of Engineering to an unknown destination on the next day in a Mahendra Bolero Vehicle, is absolutely illegal. The removal of electronic voting machines from the notified area of security to an unknown place was with a view to replace the original electronic voting machine used at the polling station and with other voting machines so as to boost the votes in favour of first respondent. This is manifest from the difference between the number on the electronic voting machines supplied by the Returning Officer to the Presiding Officer to each of the polling station on the date of polling recorded in Form 17C part 1 and the number on the electronic voting machines from which the votes are said to have been counted. In the electronic voting system, the number on the electronic voting machines used at the polling station which is entered in Form No. 17-C Part 1 and the number on the electronic voting machines from which the votes are counted as entered in Form No. 17-C Part-II must tally. He has stated that the electronic voting machines used at the plling station as mentioned in the Form No. 17C Part-1 are different from the electronic voting machines mentioned in Form No. 17-C Part-II. The number of votes said to have been counted do not tally with the number of votes polled. The electronic voting machines from which the votes have been counted have been replaced. There was large scale illegality in counting of votes. He submitted an application to the Returning Officer to recount the votes. But Returning Officer gave an endorsement that the application was filed after declaration of results.

193. Further PW1 has stated that after tabulating the number of votes secured by each candidate, before declaration of result, the Returning Officer should announce the result of tabulation and wait for objections if any. But, the Returning Officer was partial to the first respondent and was rendering assistance to her.

194. In his cross-examination, P.W.1 has stated that he had appointed counting agents for all tables of all the segments. He has denied the suggestion that the counting agents were present till the end of counting. He cannot say how many votes were needed to be counted in the 16th, 17th, and 18th round of counting. He has denied the suggestion that Form No. 17 C part-1 of Bellary Constituency tally with Form No. 17C Part-II. He has denied the suggestion that all the votes were recorded in the EVMs and they are counted and they tally with the counting in Form No. 20. He has denied the suggestion that the entire election process of Bellary Constituency was properly conducted.

195. P.W. 3 has deposed that a day after polling he witnessed a news programme in the Kasturi Television Channel. It was shown that boxes which were used as a cases to cover EVMs were put into Bolero vehicle and shifted to unknown destination. He was appointed as Assistant Returning Officer in Sandur assembly segment. The counting was done simultaneously. The counting of the entire parliamentary constituency was divided into eight assembly segments and each assembly segment was accommodated in two separate rooms. The counting resumed around 8.00 a.m. At the end of round, the result of each polling station was entered into a tabulation sheet and handed over to the staff in charge for further tabulating the results from all the

counting rooms of each assembly segment. The staff in charge of tabulation was coated in a enclosure adjacent to the chamber of the Returning Officer. It was after such tabulation which disclosed the votes secured by each candidate after each round of counting was handed over to the Returning Officer. After receipt of the said information, the Returning Officer had to make round-wise announcement by entering the said information in the appropriate form.

196. The round-wise results of the counting were announced till 15th round of counting and Indian National Congress Candidates was leading. But, after the 15th round there were no announcement. When such being the case, it was abruptly declared that Smt. J. Shantha had succeeded in the election with a margin of 2000 and odd votes. The said declaration was done without entering the relevant details. The Indian National Congress Party workers tried to enter the Returning Officer's Chamber to verify the authenticity of the declaration of election, but they could not as the BJP workers and the police blocked the passage to the Returning Officer's Chamber. The declaration of result was done with great haste and in an unusual manner. The request for re-counting of votes by the Congress party workers was denied.

197. In his cross-examination, PW3 has denied the suggestion that he did not witness any programme in Kasturi Channel and no such programme was telecast and that no candidate has lodged any protest with the Returning Officer or the Chief Election Commissioner and that after counting was over and after making necessary entries, the result was announced declaring the first respondent as elected. He has also denied the suggestion that the result of counting was announced at the end of each round after 15th round till 18th round.

198. P.W. 5 has deposed that he was appointed as counting agent of Indian National Congress Party. The counting took place on 16-5-2009 at Y.Y. Mahabaleshwarappa College of Engineering. After 15th round of counting. Sri N.Y. Hanumanthappa was leading in all the segments. At the end of 15th round, it was announced that Sri N.Y. Hanumanthappa was leading by 6,822 votes. It was almost certain that Sri N.Y. Hanumanthappa would succeed in the election. The counting staff did not count the votes secured by each candidate in the 16th, 17th and 18th rounds. The number of votes secured by each candidate was also not displayed or shown on the screen. At that stage, huge crowd of BJP supporters assembled in the compound of the counting place and rushed into the counting hall and Returning Officer's Chamber. They were beating drums and raising slogans. The Returning Officer summoned a team of Police personnel and prevented the counting agents and the supporters of the Indian National Congress from effectively participating in the counting process.

199. Even though 16th, 17th and 18th rounds were not counted, the Returning Officer declared that Smt. Shantha has been elected by a margin of 2000 and odd votes. The declaration was made even before the number of votes polled by each candidate had been calculated. The Returning Officer did not announce the number of votes secured by each candidate. He did not wait even for a few seconds berore declaring Smt. J. Shantha has been elected. He deprived the opportunity for seeking recount, despite the request for recount being made on behalf of Sri N.Y. Hanumanthappa, at the earliest possible time.

200. In his cross-examination, PW5 has stated that he has not produced any documents that he was appointed as counting agent of Indian National Congress Party. He has denied the suggestion that counting of 16th, 17th and 18th round was done and after counting and making necessary entries in the relevant forms, the result was declared. He has denied the suggestion that after counting of 16th, 17th and 18th rounds, the votes secured in each round was displayed. He has denied the suggestion that he was not present at the counting place and he has deposed falsehood.

201. In his further cross-examination in chief, PW.5 has stated that he has produced documents to show that he was appointed as counting agent of second respondent. It is marked as Ex.P.57, in the cross examination he has stated that Ex.P.7 is not issued by the Congress Party but is was issued by the Election Officer.

202. P.W. 11 has deposed that he had appointed Counting Supervisors and Counting Assistants. At the end of each round, the votes secured by each candidate will be announced. He had arranged sound system i.e., public address system to announce the counting of votes after each round. He has not received any complaint from any candidate that counting was not announced. Form No. 20 Part I will be entered by the Assistant Returning Officer for a particular Assembly segment and form No. 20 Part II will be entered by the Returning Officer. After entering the number of votes secured by each candidate in form No. 20 Part II,

the Returning Officer has to sign it. After entry is made in form No. 20 by the Returning Officer, before it is signed by the Returning Officer, the number of votes secured by each candidate had to be announced. When he announced the number of votes secured by each candidate, some agents of the candidates were present. When he announced, the first respondent J. Shantha and the election agent of the second respondent were present. He has not received any complaint before the declaration of results stating that the counting is not properly done. After declaration of results, he had received the complaint. Before declaring the results, he waited for one hour, but he did not receive any complaint regarding improper counting of votes. As per the instructions contained in the handbook, the Returning Officer has to wait for 20 minutes after announcing the number of votes secured before declaring the results. Recounting can be asked before declaration of the result.

203. On 16-5-2009, after declaration of the results at 4.00 p.m., he received a complaint from the second respondent for recounting. He did not take any action on the complaint, but forwarded it to the Election Commission of India. He does not know till today whether any action is taken on the complaint forwarded by him. Except the second respondent, no other candidates have requested for recounting. He has deposed regarding the discrepancies in form No. 17 C part 1 and the result of counting in many assembly segments.

204. In his cross-examination, P.W.11 has stated regarding the procedure to be followed by the presiding officer at the time of polling. He has stated that the EVMs received from different polling stations were kept in the strong room from 23-4-2009 till 16-5-2009 till they were taken out for counting. He has denied the suggestion that EVMs were removed from the strong room during mid-night and they were transported to some other place in Bolero vehicle. He does not know whether the transporting of EVMs from the strong room to some other place was telecast in Kasturi Channel.

205. Further in his cross-examination, P.W.11 has stated that counting was arranged separately for each assembly segment. Each counting table had one supervisor and two assistants. The candidates also appoint their counting agents in each table. It takes 20-30 minutes for counting of each assembly segment. He was there in the counting premises from 8.00 a.m. till the counting was over. At the end of each round he had sent report regarding progress of Counting. He has stated that Congress-I candidate was leading but he does not remember upto what round he was leading. After seeing the records he can say that at the end of 15th round Sr.N.Y. Hanumanthappa-Congress I candidate had secured 3,71,142 votes and Smt. J. Shantha-BJP candidate had secured 3,64,320 votes. In the 16th round of counting of votes, Hagaribommanahalli segment, Vijayanagar segment, Kampli segment, 93 Bellary Rural segment, 94 Bellary city segment, Sandur segment and Kudlagi segment was done. He has denied the suggestion that at the end of 15th round and before the completion of 16th, 17th and 18th rounds, there was huge rush of BJP workers raising slogans stating that the first respondent Smt. J. Shantha, BJP candidate, had won the election and they were led by Dr. Mahipal, Bellary District President and Kolur Basavanagowda, former Member of the Parliament. He has stated videograph will be done while counting. He does not know whether the declaration of result was videographed or not. The declaration of result was approximately at about 12.30 p.m. on 16-5-2009. After declarationof result at about 1.30 p.m., the Indian National Congress candidate, his election agent and other followers had come to him and orally complained that there was commotion, confusion and no proper counting has taken place. He had asked them to give complaint in writing. The complaint was given in writing in between 4 to 5 p.m. on 16-5-2009. Ex. R.14 is the copy of the complaint given to him on 16-5-2009 by the petitioner. He has stated that he has not received any complaint from any candidates while process of counting was going on till its completion.

206. The petitioner contends that the entries in form No. 17C part-II do not tally with the entries in form No. 17C Part-I. There is irregularity in polling and counting. The Returning Officer did not make any announcement after 15th round. The counting is in violation of Rule 66A of the Conduct of Election Rules.

207. The first respondent contends that the polling agents were appointed by the petitioner to all the polling stations and they have signed form No. 17C part-I and there was no irregularity in the polling and the polling agents have not complained any irregularity in the polling or recording of form No. 17C Part-I. There was no irregularity or illegality in the counting process. The petitioner had an opportunity to raise objection during the process of counting. But in fact he did not raise any objection. The recounting application was made long after the declaration of the results. The votes counter in the EVMs were the same votes which were cast on the date of polling. The alleged mistakes or irregularity in Form No. 17C Part I and Part II do not materially affect the result of the election.

208. RW. 4 to RWs. 108, 110 and 126 have deposed that no polling agent had raised any objections. They have deposed that a mock poll was conducted in the presence of the polling agents. At the end of polling, the Presiding Officers obtained the signatures of the polling agents, sealed the EVMs and delivered the EVMs to the respective Assistant Returning Officers. The Assistant Returning Officers i.e., RWs. 1 to 3 have deposed that upon receipt of the EVMs from the Polling Stations, they will transmit them to the strong room. On the date of counting, the EVMs will be brought to the counting table from the strong room and the seals will be opened in the presence of counting agents and election agents. RW.109, RWs.111 to 125 and RW. 127 have deposed regarding counting process. They have stated that nobody lodged any complaint regarding counting process.

209. Form No. 17C Part-I and Part II are important documents. The following discrepancies are noticed in Form 17C Part-I and Part-II.

1. Non-mentioning of Control Unit Number in Form No. 17C Part-I
2. Control Unit numbers in Form No. 17C Part I and Part II do not tally.
3. The discrepancies in column Nos. 1, 2 and 5 in Form 17C Part-I.
4. Non-mentioning of Control Unit Numbers in Form No. 17C Part-II i.e., counting sheets.

210. In the following cases the Control Unit Number has not been mentioned in Form 17C Part-I.

Sl. No.	No. and Name of the Polling Station	Exhibits (Form No. 17C Part-I)
1.	101, Sri U.J.C.M. Higher Primany School, Bhovi Colony, H.B. Halli Assembly Segment.	P-206
2.	27, G.H. School, Ammankere Kudligi Assembly Segment.	P-215
3.	104, Government Higher Primary School, M.B. Ayyanahalli, Kudalgi Assembly Segment.	P-218
4.	173, G.H.P. School, Kenchamallanahalli, Kudalgi Assembly Segment	P-220
5.	48, Bellary City	P-170
6.	14, G.M.H.P.S., Kample Assembly Segment	P-90

211. In the following cases the Control Unit Numbers in Form No. 17C Part I and Part II do not tally.

Sl. No.	No. and name of the Polling station	Exhibit number, Form No. 17C Part-I with Control Unit number	Exhibit number, Form No. 17C Part-II i.e., Counting Sheet with Control Unit number
1.	15, Emmiganur, Kampli Assembly Segment	P-91, CU No. 91, CU-063	P-92 BLY-CU-0649
2.	21, Bettiginahal Kampli Assembly Segment	P-93, CU No. C41525	P-94 CU No. CU-1585
3.	30A, G.H.P. School, Kampli Assembly Segment	P-96 CU No. F 99467	P-97 CU No. CU-2032
4.	66, G.H.P. School, Kampli Assembly Segment	P-106 CU No. BLY CU-1533	P-107 CU No. 153
5.	77A, Devasamudra, Kampli Assembly Segment	P-108 CU No. BLY CU-1378	P-109 CU No. CU-1808
6.	84, Nelludi, Kampli Assembly Segment	P-110 CU No. 1	P-111 CU No. BLY CU-1968
7.	156, Bellary City	P-186 CU No. D-48630	P-187 CU No. CU-0549
8.	117. G.P.H.S. Sanganakallu, Bellary	P-130 CU No. 39466	P-131 CU No. BLY CU-1965
9.	145, G.H.P.S. Benakallu	P-142, CU No. BLY CU 0744	P-143 CU No.C-40275
10.	192, G.H.P.S., M.B. Nagara, Vakrani camp	P-159, CU No. 93 CU-018	P-160 CU No. BLY Su 0193
11.	09, Indiranagar, Bellary	P-161, CU No. BLY CU 1252	P-162 CU No. C 42241
12.	Taluk Officer, 117	P39, CU No. 43683	P40, CU No. C-43680
13.	Not mentioned	P45, CU No. BLY-CU-0774	P46, CU No. C-38793
14.	GMHPS, Moka,	P49, CU No. BLY-CU-1318	P50, CU No.C-40002

212. In the following cases the following discrepancies are noticed in column Nos. 1, 2 and 5 in Form 17C Part-I :-

Sl. No.	Polling Station No. (P.S.)	Electors assigned to Polling Station	No. of voters entered in the Register of Voters (Form 17A)	Number of Voters recorded as per voting machine	Exhibits
1.	10	901	656	Blank	P-88
2.	91	578	Blank	Blank	P-176
3.	101	929	489	Blank	P-177
4.	114	1136	721	01	P-180
5.	173	667	281	Blank	P-190
6.	228	Blank	956	715	P-194
7.	03	669	498	Blank	P-195
8.	54	482	Blank	Blank	P-198
9.	55	764	566	Blank	P-199
10.	77A	666	505	Nil	P-202
11.	93	679	Blank	679	P-204
12.	98	593	Blank	503	P-205
13.	145	712	546	Blank	P-208
14.	152	1237	Blank	Blank	P-210
15.	175	04	8	629	P-212
16.	Blank	1134	671	Blank	P-219
17.	24	Blank	1500	548	P-221
18.	89	977	Blank	Blank	P-224
19.	29	914	Blank	Blank	P-121
20.	16	1503	626	Blank	P-118
21	86	749	595	7	P-125
22.	89	774	582	Nil	P-127
23.	9	923	600	07	P-156
24.	26	1186	Blank	Blank	P-163
25.	98	1140	Blank	Blank	P-47
26.	72	1052	383	Blank	P-172
27.	154	831	563	Blank	P-146

213. In the following cases Control Unit Numbers are not mentioned in Form 17C Part II i.e., the counting sheet.

Sl. No.	Polling Station No. & Assembly Segment No. & Name	Exhibits (Form No. 17C Part II i.e., the Counting Sheet)
1.	120, 93-Bellary	P-133
2.	135, 93-Bellary	P-135
3.	131, 93-Bellary	P-137
4.	141, 93-Bellary	P-139
5.	143, 93-Bellary	P-141

Sl. No.	Polling Station No. & Assembly Segment No. & Name	Exhibits (Form No. 17C Part II i.e., the Counting Sheet)
6.	152, 93-Bellary	P-145
7.	10, 93-Bellary	P-117
8.	187, 93-Bellary	P-158
9.	154, 93-Bellary	P-147
10.	86, 93-Bellary	P-126
11.	110, 93-Bellary	P-129
12.	185, 93-Bellary	P-155
13.	175, 93-Bellary	P-152
14.	20 93-Bellary	P-120
15.	4, 96-Kudligi	P-214

214. Form No. 17C Part-I and Form No. 170. Part-II are relevant documents. They must tally with each other. In Form No. 17C Part-I in several cases some columns are left blank and the entries are incomplete. In many cases the entries in Form No. 17C Part-I and Form No. 17C Part-II do not tally.

215. In exhibits P.206, P215, P218, P220, P.170 and P.90 the control unit number is not mentioned in Form No. 17C Part I. In exhibits P.91-92, P.93-94, P96-97, P.106-107, P108-109, P.110-111, P.186-187, P.130-131, P.142-143, P.159-160, P.161-162. P.39-40, P.45-46, and P.49-50, the control unit numbers in Form No. 17C Part-I and Part II do ot tally. In exhibits P.133, P.135, P.137, P.139, P.141, P.145, P.117, P.158, P.147< P.126, P.129, P.155, P.152, P.120 and P.214 the control unit numbers are not mentioned in Form No. 17C Part II i.e, counting sheets. In some cases the number of votes recorded in the EVMs are left blank.

216. In Ex.P.17 Form No. 17C Part-I relating to polling station No. 88, column No. 5 shows that the number of votes recorded in voting machine as 19. Form No. 17C Part-II is left blank. But, certified copy of Form No. 17C Part-II shows that the number of votes counted are 531. While Form No. 17C Part-I indicates the number of votes recorded in the EVM is19, but the number of votes counted are 591.

217. In Ex.P.41 the control unit number is mentioned as 01 in Form No. 17C Part-I. In Form No. 17C Part II, the votes are shown but the candidates names is not mentioned. But, in Ex.P.42 the certified copy of Form No. 17C Part-II the control unit number is shown as C-45228.

218. From this it is clear, in some cases the control unit number is not mentioned in Form No. 17C Part I and Part II. In some cases the control unit number in Form No. 17C Part I does not tally with the control unit number in Form No. 17C Part II. There are omissions in Form No. 17C Part I. This creates doubt whether the votes polled and counted are one and the same.

219. The difference of votes between the winning candidate i.e., the first respondent and the second respondent is only 2243. The discrepancies noticed are serious in nature. It has certainly affected the result of the election. The omissions are serious in nature, that too, when the difference of votes between the winning candidate and the second respondent is only 2243. There is counting irregularity which has materially affected the result of the election.

220. The petitioner contends that the counting was not done properly. Particularly from 16th round onwards. It is alleged that there was chaos and confusion and there was no opportunity to request for recounting immediately. The petitioner has sought for recounting of votes as per Ex.R-14. The endorsement has been given as per Ex.P.10 stating that the request for recounting has been rejected. But, the Returning Officer P.W.11 has deposed as follows:

> "On 16-5-2009, after declaration of result at 4.00 p.m., I received a complaint from the second respondent for recounting. I did not take any action on the complaint, but forwarded it to the Election Commission of India, I do not know till today whether any action is taken on the complaint forwarded by me. Except the second respondent, no other candidates had requested for recounting.

221. While Ex.P.10 shows that the request for recounting has been rejected, the evidence of P.W.11 shows he has not taken any decision and the complaint has been forwarded to the election commission. The evidence on record shows that there is counting irregularity which has materially affected the result of the election and therefore, recounting needs to be ordered. Issue Nos. 4,5 and 6 in E.P.No. 4/2009 answered accordingly holding that there is counting irregularity which has materially affected the result of the election and therefore, recounting needs to be ordered.

ISSUE NO. 7

222. This issue relates to corrupt practice.

223. It is alleged that the BJP workers distributed money and liquor throughout the constituency. The second respondent requested for postponement of election. A complaint was lodged by Sri. N.Y. Pennobali Swamy in the Rural Police Station, Bellary, on 23-4-2009 alleging that on 22-4-2009 at about 5.56 p.m., six members namely Giribabu, Deepak Kumar, Raghavendra Gupta, Senthosh Kumar, Sreenivas and Subramanya, all BJP workers were entering the names of the votes in a notebook and also distributing money to them. Sri D. Mahesh Kumar, the Indian National Congrees party worker, requested them to stop distribution of money to the voters. The accused did not pay heed to it. Then Congress party workers apprehended the accused. The accused were distributing money. After paying the money to the voter, they were marking the name in electoral roll and writing down the information in a notebook. The accused were apprehended with the voters list, money and notebook. They were handed over to the police. The police took them in a jeep. While going the accused threw away the notebook, voters list and packet containing money into a conservancy. Sri. D. Maheshkumar who followed the jeep picked up the same and handed over to the police. It was found that there was Rs. 15,800/- in the packet. The amount, voters list and notebook are in the custody of the Bellary Rural Police Station. The police have registered a case. Ex.P.13 is the complaint lodged by Sri N.Y. Pennobali Swamy. FiR was registered as per Ex.P.14. Ex.P.15 is the request by the Station House Officer for permission to investigate the matter.

224. The first respondent has denied the allegations regarding corrupt practice. It is denied that the first respondent or her election agent or anybody with her consent or her agent's consent had indulged in any such act. The persons mentioned in the complaint are not the BJP workers or supporters of the first respondent.

225. PW.1 has deposed that a day prior to the date of polling i.e., on 22-4-2009 at about 5.56 p.m., one Sri. Maheshkumar, the brother-in-law of Sri N.Y. Pennobli Swamy, the elction agent of B. Ramaiah i.e., Respondent No. 6 noticed six persons namely Sri Giri, Sri. Deepak Kumar, Sri Raghava Gupta, Sri Santosh Kumar, Sri Srinivas and Sri Subramanya, all canvassing agents and active workers on behalf of the first respondent and her election agent were distributing money to the voters of Srinivasa Colony. They were going from house to house in Srinivasa Colony with voters list in their hands and distributing the money to the voters and marking the name of voters who were paid money. There was no secret on the part of these persons in bribling the voters. At that time, the said six persons were making note of the amount paid to different voters in the notebook. The information was given to the Deputy Superintendent of Police who had jurisdiction over the area. He came to the spot and caught them red handed. All these six persons had with them money, voters list and notebook. The documentary evidence of distribution of money to the voters and other documents were collected and the above said persons were taken to the Gandhinagar police station. Then they were sought to be shifted to the jurisdictional police station. While these agents of the first respondent were being transported they threw away the voters list, bundle of currency notes and a note book. These articles were thrown away to destroy the evidence. Sri. Mahesh Kumar who was following the police jeep collected from the conservancy the notebook, voters list and bundle of currency notes and the same were handed over to the police. The Investigating Officer found that there was a sum of Rs. 15,800/-. Sri N.Y. Pennobali Swamy lodged the complaint. The complaint was registered by the rural police and investigation was taken up.

226. In his cross-examination, PW.1 has stated that if it is suggested to him that he has not stated in his election petition that the first respondent or her election agent and other agents with the consent and knowledge of the first respondent and her election agent indulged in large scale distribution of money and liquor, he would say that he has stated that the BJP workers have distributed liquor and money throughout the Parliamentary constituency. He has denied the suggestion that Smt. J. Shantha or her election agent have not distributed money or liquor. He has stated, Sri. N.Y. Pennobali Swamy is the brother of the second resopondent and election agent of the respondent No. 6. He has denied the suggestion that the first respondent or her election agents had not given consent to Sri. Giribabu, Sri Deepak Kumar, Sri. Raghavendra Gupta, Sri Snathosh Kumar, Sri Sreenivas and Sri Subramanya or anybody to distribute money or liquor.

227. PW.4 in his evidence has stated that on 22-4-2009 at about 5.30 p.m., he was walking through Srinivasa Colony at Tallur Road, Bellary City. At about 5.56 p.m., they noticed some people distributing money to some residents of the locality. They were going from door-to-door and cross-checking the house number, voters residing in the said house with the electoral rolls that they were carrying. The said persons fater satisfying themselves about the votes in each house were marking the names in the electoral rolls. He along with his friends walked towads the persons distributing money and found that they were BJP workers namely Sri. Giribabu, Sri Deepak Kumar, Sri. Raghavendra Gupta, Sri Snathosh Kumar, Sri Sreenivas and Sri Subramanya. They were acting under the guidance of Sri Giribaru and distributing money to the voters to influence them to vote in favour of the BJP candidate. They were working with the consent of Smt. J. Shantha and under the instruction of Sri Somashekara Reddy, M.L.A., Bellary City. He has stated, he and other Congress workers asked them to stop distruibuting money to the voters. They did not pay heed to their request and went on distributing the money. One Sri. Pramod and Sri Kiran went and informed the jurisdictional Deputy Superintended of Police (Dy.S.P.) The said Dy.S.P. and a few of his staff arrived at the spot in a jeep and apprehended the six persons. The police took them in a jeep to the Gandhinagar Police Station. Later on they were shifted to the Bellary Rural Police Station. On the way from Gndhinagar Police Station to Bellary Rural Police Station. The accused threw away a bundle of currency notes, electoral rolls and a notebook to destroy the evidence. He was following the police jeep and noticed the articles which were thrown away. He collected them and handed over to the police at Bellary Rural Police Station, the Police on opening the bundle noted that there were 25 notes of Rupees Five Hundred denomination and 33 notes of Rupees Hundred demonimation. In all Rs. 15,800/- The police did not register the F.I.R. immediately. They did that they were waiting for the orders of their superiors. At that time Sri Somashekara Reddy, M.L.A., Bellary, came with his henchmen in 6 jeeps and entered the police station and escorted the six accused persons. The complaint was lodged by Sri N.Y. Pennobali Swamy before the Bellary Rural Police.

228. In his cross-examination, PW.4 has stated that Sri N.Y. Pennobali Swamy is his maternal uncle and brother of the second respondent. He has denied the suggestion that Smt. J. Shantha or her agents have not brided the voters. He has also denied the suggestion that his statement that six persons namely Sri. Giribabu, Sri Deepak Kumar, Sri. Raghavendra Gupta, Sri Snathosh Kumar, Sri Sreenivas and Sri Subramanya were distributing money with the consent of Smt. J. Shantha is false. He has stated that he gave written complaint to the Sub-Inspector of Bellary Rural Police Station and it was not registered and thereafter, he informaed N.Y. Pennobali Swamy and he requested to register the FIR and It was registered.

229. Ex.P.13 is the complaint lodged by Sri N.Y. Pennobaliswamy. It is alleged that on 22-4-2009 at about 5.56p.m. the BJP workers namely Giribabu, Deepak Kumar, Raghavendra Gupta, Santhosh Kumar, Sreenivas and Subamanya, were distributing money to the voters and noting it in the excise book. The Congress workers and police apprehended the accused and while going In the police Jeep the accused threw away the money and the book and they were picked up by the Congress Workers. The accused were taken to Gandhinagar Police Station and from there to Bellary Rural Police Station. One Sri Somashekar Reddy the local MLA came and took away the accused. The money, voters list and note book were handed over to the police along with the complaint.

230. Based on Ex.P.13, a case has been registered. Ex. P.14 is the FIR. Ex.P.15 is the request by the Station house officer for permission to investigate the matter. A case in Crime No. 118/09 of Bellary Rural Police Station has been registered for the offences punishable under Secs. 171(E) and (H) of IPC.

231. Ex.P. 16 is the newspaper report reporting the statement of Sri K.S. Eshwarappa, Power Minister.

232. The petitioner contends that the accused perons were distributing money to the voters on 22-4-2009. The Congress party workers apprehended the accused and handed over to the police. When the accused were taken to the Police Station in a Jeep, on the way, the accused threw away note book, voters list and currency notes amounting to Rs. 15,800/- in to the conservancy. Case has been registered. Ex. P.16 is the statement of K.S. Eshwarappa, Power Minister. The 1st respondent has committed corrupt practice.

233. The ingredients of corrupt practice are ;

(a) That any gift, offer or promise should be made by the candidate or his election agent or any other persons with the consent of the candidate or his election agent.

(b) Offering any gratification.

(c) To vote or refrain from vote at an election.

(d) As reward or bargain for having received the gratification.

234. Except the allegations that six persons were distributing money to the voters, there is no evidence on record to show to whom the money was distributed. The petitioner has not furnished the details of the voters to whom the money was distributed.

235. Ex.P.13 is the complaint made by Sri N.Y. Pennobali Swamy who is the brother of the second respondent. It is alleged, six BJP workers namely Sri. Giribabu, Sri Deepak Kumar, Sri. Raghavendra Gupta, Sri Snathosh Kumar, Sri Sreenivas and Sri Subramanya were distributing money to the voters and noting it in the notebook.

236. PW.1 in his cross-examination has stated that Sri N.Y. Pennobali Swamy is the brother of the second respondent and election agent of respondent No. 6. PW.4 in his cross-examination has stated that Sri. N.Y. Pennobali Swamy is his maternal uncle and brother of the second respondent. Therefore, it is clear, PW.1 and PW.4 are the relatives of the second respondent. Sri N.Y. Pennobali Swamy, the complainant has not been examined. Similarly, Police officers who have registered the case and apprehended the accused have not been examined. Notebook, voters list etc., have not been produced. The allegations of corrupt practice is a serious charge. It needs to proved beyond reasonable doubt. The petitioner has not examined Sri N.Y. Pennobali Swamy, second respondent has not secured majority of valid votes. It is yet to be ascertained after recounting. Therefore, the second respondent cannot be declared as elected at this stage. It depends upon the result of recounting. Issue No. 10 in E.P.No. 4/2009 and issue No. 4 in E..P.No. 11/2009 answared, accordingly.

Issue No. 11 in E.P.No. 4/2009 and issue No. 5 in E.P.No. 11/2009

241. The first respondent had filed Misc. Cvi. 5316/2010 and Misc. Cvi. 5313/2010 to reject the election petitions on the ground that they do not disclose cause of action. This Court by its order dated 26-7-2010 has held that the election petitions disclose cause of action and it has become final. Therefore, issue No. 11 in E.P.No. 4/2009 and issue No. 5 in E.P.No. 11/2009 is answered accordingly holding that the election petitions disclose cause of action.

Issue No. 12 in E.P.No. 4/2009 and Issue No. 6 In E.P.No. 11/2009.

242. The first respondent had filed Misc. Cvl. 5314/10 and Misc.Cvl. 5311/2010 praying to delete respondents 8,9 and 10 in E.P.4/2009 who are respondents 7, 8 and 9 in E.P.No. 11/2009. This Court by its order dated 26-7-2010 has held that the respondents 8, 9 and 10 in E.P.No. 4/2009 who are respondents 7, 8 and 9 in E.P.No. 11/2009 cannot be impleaded as parties and they need to be deleted and it has become final. In view of this, the petitions will not fail on account of misjoinder of parties. Issue No. 12 in E.P.No. 4/2009 and issue No. 6 in E.P.No. 11/2009 are answered accordingly.

243. The first respondent has filed recrimination petition. She has not adduced any evidence. The learned counsel for the first respondent has submitted that the first respondent has no evidence on recrimination petition. Therefore, the recrimination petition is liable to be dismissed.

244. In view of my findings on the issues raised for considenation, the following order is passed.

Accordingly, E.P.No. 4/2009 is allowed in part directing recounting of votes and then to declare the result. The election of the first respondent to 9, Bellary (ST) Parliamentary Constituency is hereby set-aside. The returning officer of 9, Bellary (ST) Parliamentary Constituency is directed to recount the votes of 9, Bellary (ST) Parliamentary Constituency within four weeks from today and declare the result. The other prayers in E.P.No. 4/2009 are hereby rejected.

245. E.P.No. 11/2009 and recrimination petition are hereby dismissed.

Sd/-

JUDGE

BY ORDER,

R.K. SRIVASTAVA,

PRINCIPAL SECRETARY

P.R. 53 ELECTION COMMISSION OF INDIA

ಸಂಸದೀಯ ವ್ಯವಹಾರಗಳು ಮತ್ತು ಶಾಸನ ರಚನೆ ಸಚಿವಾಲಯ

ಅಧಿಸೂಚನೆ

ಸಂಖ್ಯೆ: ಸಂವ್ಯಶಾಇ 37 ಕೇಶಾಪ್ರ 2012, ಬೆಂಗಳೂರು, ದಿನಾಂಕ: 08ನೇ ಆಗಸ್ಟ್, 2012

2012ನೇ ಸಾಲಿನ 16–07–2012 ದಿನಾಂಕದ ಭಾರತ ಸರ್ಕಾರದ ಗೆಜೆಟ್‌ನ ವಿಶೇಷ ಸಂಚಿಕೆಯ ಭಾಗ–II ಸೆಕ್ಷನ್ (i)ರಲ್ಲಿ ಪ್ರಕಟವಾದ ಈ ಕೆಳಕಂಡ The All-India Institute of Medical Sciences (Amendment) Ordinance, 2012 (No. 1 of 2012) ಅನ್ನು ಸಾರ್ವಜನಿಕರ ಮಾಹಿತಿಗಾಗಿ ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರದಲ್ಲಿ ಮರು ಪ್ರಕಟಿಸಲಾಗಿದೆ.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

NOTIFICATION

New Delhi, the 16th July, 2012

THE ALL - INDIA INSTITUTE OF MEDICAL SCIENCES (AMENDMENT) ORDINANCE, 2012

1 OF 2012

Promulgated by the President in the Sixty-third year of the Republic of India.

An Ordinance further to amend the All-India Institute of Medical Sciences Act, 1956.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for her to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

1. Short title and commencement.- (1) This Ordinance may be called the All-India Institute of Medical Sciences (Amendment) Ordinance:- 2012.

(2) It shall come into force at once.

2. Amendment of long title :- In the All-India Institute of Medical Sciences Act, 1956 (25 of 1956) (hereinafter referred to as the principal Act), in the long title, for the words "an All-India Institute of Medical Sciences" , the words " All-India Institutes of Medical Sciences " shall be substituted.

3. Amendment of section 1:- In section 1 of the Principal Act, in sub-section (1), for the words “All-India Institute of Medical Sciences " the words “All-India Institutes of Medical Sciences " shall be substituted.

4. Amendment of section 2:- In section 2 of the Principal Act,-

(A)for clause (a), the following clauses shall be substituted namely:-

` (a) "corresponding Institute" means the Institutes referred to in column (3) of the Table given under section 27A;

(aa) "existing Institute" means the All-India Institute of Medical Sciences,-

(i)established under sub-section (1) of section 3, before the commencement of the All-India Institute of Medical Sciences (Amendment) Ordinance, 2012; and

(ii)located at New Delhi, as required under section 12 as it stood before such commencement;

(ab) "Fund" means the Fund of the Institute referred to in section 16;';

(B)in clause (c), after the words and figure "under section 3", the words, brackets and figures "and includes the corresponding Institutes and other Institutes which may be established on and after the commencement of the All-India Institute of Medical Sciences (Amendment) Ordinance, 2012" shall be inserted;

(C)after clause (f), the following clause shall be inserted at the end, namely:-

'(g) "society" means the society referred to in column (2) of the Table given under section 27A.',

5. Amendment of section 3 :- In section 3 of the principal Act,-

(a) in sub-section (1), the following proviso shall be inserted, namely:-

"Provided that the Central Government may, on and after the commencement of the All-India Institute of Medical Sciences (Amendment) Ordinance, 2012, establish by notification in the Official Gazette, such other All-India Institutes of Medical Sciences at such places as it may specify in the said notification in addition to the existing Institute and the corresponding Institutes." ;

(b) in sub-section (2), for the words "The Institute", the words "Every Institute" shall be substituted.

6. Amendment of section 4 :- In section 4 of the principal Act,-

(i) in the opening portion, for the words "The Institute", the words "Every Institute" shall be substituted;

(ii) for clause (a), the following clauses shall be substituted, namely:-

" (a) in the case of existing Institute, the Vice-Chancellor or the Delhi University, ex-officio;

(aa) in the case of every other Institute established on and after the commencement of the " All-India Institute of Medical Sciences (Amendment) Ordinance, 2012, the Vice-Chancellor of a University situated in a State in which such Institute has been established after such commencement and such Vice-Chancellor shall be nominated by the Central Government,".

7. Substitution of new section for section 5 :- For section 5 of the principal Act,- the following section shall be substituted, namely:-

Declaration of Institute as institution of national importance :- "5. (1) It is hereby declared that the existing Institute declared as an institution of national importance, before the commencement of the All-India Institute of Medical Sciences (Amendment) Ordinance, 2012, under section 5 as it stood before such commencement, shall continue to be an institution of national importance.

(2) It is hereby declared that every corresponding Institute shall be an institution of national importance.

(3) It is hereby declared that every Institute established under the proviso to sub-section (1) of section 3. On and after the commencement of the All-India Institute of Medical Sciences (Amendment) Ordinance, 2012, shall be an institution of national importance, ".

8. Amendment of section 7 :- In section 7 of the principal Act, in sub-section (1),-

(a) for the words "President of the Institute", the words “President for every Institute" shall be substituted;

(b) the following proviso shall be inserted, namely:-

" Provided that the President of the existing Institute shall also be the President of every corresponding Institute and other Institutes established on and after the commencement of the All-India Institute of Medical Sciences (Amendment) Ordinance, 2012, till such date the Central Government nominates a separate President for every corresponding Institute and other Institutes established after such commencement, ".

9. Amendment of section 8 :- In section 8 of the principal Act,-

(a) for the words "from the Institute ", the words "from the Institute of which they are the President and members"

shall be substituted;

(b) the following proviso shall be inserted, namely:-

"Provided that in case a person is a President of two or more Institutes, the allowances shall be borne by the Institutes in such proportion as may be prescribed by rules. ",

10. Amendment of section 9 :- In section 9 of the principal Act,-

(a) for the words " The Institute shall ", the words " Every Institute shall " shall be substituted;

(b) for the words " the Institute shall meet ", the words " Every Institute shall meet" shall be substituted;

(c) the following proviso shall be inserted, namely:-

“Provided that the provisions relating to holding of the first meeting shall not apply to the existing Institute.",

11. Amendment of section 10 :- In section 10 of the principal Act,-

(a) in sub-section (1), -

(i) for the words " a Governing Body of the Institute which shall be constituted by the Institute", the words "separate Governing Body for every Institute which shall be constituted by such Institute" shall be substituted;

(ii) the following proviso shall be inserted, namely:-

" Provided that the Governing Body of the existing Institute, constituted before the commencement of the All-India Institute of Medical Sciences (Amendment) Ordinance, 2012, shall be deemed to have been constituted under this section.",

(b) in sub-sections (2) and (3), for the words “the Institute ", the words “every Institute" shall be substituted;

(c) in sub-section (5), -

(i) for the words “the Institute may constitute ", the words “every Institute may constitute” shall be substituted;

(ii) for the words “functions of the Institute ", the words “functions of such Institute " shall be substituted;

(d) in sub-section (6), -

(i) for the words "members of the Institute; but an ad hoc committee may include persons who are not members of the Institute", the words "members of every Institute but an ad hoc committee may include persons who are not members of such Institute" shall be substituted;

(ii) the following proviso shall be inserted, namely:-

" Provided that the Standing Committee of the existing Institute constituted, before the commencement of the All-India Institute of Medical Sciences (Amendment) Ordinance, 2012, shall be deemed to have been constituted under this section",

12. Amendment of section 11 :- In section 11 of the principal Act in sub section (1),-

(a) for the words " chief executive officer of the Institute ", the words " chief executive officer of every Institute " shall be substituted;

(b) for the words "Director of the Institute ", the words " Director of such Institute " shall be substituted;

(c) for the proviso, the following proviso shall be substituted, namely:-

"Provided that the first Director of every Institute (other than the existing Institute), established on and after the commencement of the All-India Institute of Medical Sciences (Amendment) Ordinance, 2012, shall be appointed by the Central Government;

Provided further that in case Director of a society has been appointed by the Central Government before the Commencement of the All-India Institute of Medical Sciences (Amendment) Ordinance, 2012, such Director shall be deemed to be the first Director of the concerned corresponding Institute";

13. Substitution of new section for section 12 :- For section 12 of the Principal Act,- the following section shall be substituted, namely:-

Location of Institutes.- "12 (1) The existing Institute shall be located at New Delhi.

(2) All corresponding Institutes shall be located at the places mentioned in column (3) of the Table given under section 27A.

(3) All Institutes [other than the existing Institute and corresponding Institutes referred to in sub-sections (1) and (2)] shall be located at such places as the Central Government may, by notification in the Official Gazette, specify.",

14. Amendment of section 13 :- In section 13 of the Principal Act, in the opening portion, for the words " the Institute ", the words " every Institute " shall be substituted.

15. Amendment of section 14 :- In section 14 of the Principal Act, in the opening portion, for the words " the Institute ", the words " every Institute " shall be substituted.

16. Amendment of section 15 :- In section 15 of the Principal Act, for the words " the Institute ", the words " every Institute " shall be substituted.

17. Amendment of section 16 :- In section 16 of the principal Act, in sub-section (1), -

(i) for the words " The Institute ", the words " Every Institute " shall be substituted.

(ii) after clause (d), the following proviso shall be inserted, namely:-

"Provided that the Fund maintained by the existing Institute and the society, before the commencement of the All-India Institute of Medical Sciences (Amendment) Ordinance, 2012, shall be deemed to be the Fund maintained under this section."

18. Amendment of section 17 :- In section 17 of the principal Act, -

(a) for the words " The Institute shall prepare ", the words " Every Institute shall prepare " shall be substituted.

(b) for the words " expenditure of the Institute ", the words " expenditure of the concerned Institute " shall be substituted.

19. Amendment of section 18 and 19 :- In section 18 and 19 of the principal Act, for the words " The Institute " and the Institute , wherever they occur, the words " Every Institute …………..'' shall respectively, be substituted.

20. Amendment of section 20 :- In section 20 of the principal Act, in sub-section (1),-

(a) for the words " The Institute ", the words " Every Institute " - shall be substituted.

(b) the following proviso shall be inserted, namely:-

" Provided that the pension and provident fund constituted by the existing Institute or society, before the commencement of the All-India Institute of Medical Sciences (Amendment) Ordinance, 2012, shall be deemed to be the pension and provident fund under this section."

21. Amendment of section 21 :- In section 21 of the principal Act ,-

(a) for the words “decisions of the Institute ", the words “decisions of every Institute " shall be substituted.

(b) for the words " officer of the Institute ", the words " officer of every Institute " shall be substituted.

22. Amendment of sections 22, 23, 24, 25 and 27 :- In sections 22, 23, 24, 25 and 27 of the principal Act for the words " The Institute " and " the Institute", wherever they occur, the words " Every Institute " and " every Institute " shall respectively, be substituted.

23. Insertion of new sections 27A, 27B, 27C and 27D :- After section 27 of the principal Act, the following sections shall be inserted, namely:-

27A. Incorporation of Institute registered as society under the Societies Registration Act 1860 :- Each of the Institute, registered as society under the Societies Registration Act, 1860 (21 of 1860)and mentioned in column (2) of the Table below shall be a body corporate having perpetual succession and common seal and shall by its name mentioned in column (3) of that Table, sue and be used:

TABLE

List of societies incorporated as All-India Institutes of Medical Sciences

Sl. No.	Society	Corresponding Institute and place of its location
(1)	(2)	(3)
1.	All India Institute of Medical Sciences, Bhopal	All India Institute of Medical Sciences, Bhopal (Madhya Pradesh)
2.	All India Institute of Medical Sciences, Bhubaneswar	All India Institute of Medical Sciences, Bhubaneswar (Odisha)

Sl. No.	Society	Corresponding Institute and place of its location
(1)	(2)	(3)
3.	All India Institute of Medical Sciences, Jodhpur	All India Institute of Medical Sciences, Jodhpur (Rajasthan)
4.	All India Institute of Medical Sciences, Patna	All India Institute of Medical Sciences, Patna (Bihar)
5.	All India Institute of Medical Sciences, Raipur	All India Institute of Medical Sciences, Raipur (Chhattisgarh)
6.	All India Institute of Medical Sciences, Rishikesh	All India Institute of Medical Sciences, Rishikesh (Uttarakhand)

27B. Effect of Incorportion of Institutes:- (1) On and after the commencement of the All-India Institute of Medical Sciences (Amendment) Ordinance, 2012,-

(a)any reference to a society, in any law, other than this Act, or in any contract or other instrument, shall be deemed as a reference to the corresponding Institute;

(b)all property, movable and immovable, of or belonging to a society shall vest in the corresponding Institute;

(c)all the rights and liabilities of a society shall be transferred to, and be the rights and liabilities of, the corresponding Institute;

(d)subject to the provisions of this Act, every person (including Director, officers and other employees) who is employed in the society, immediately before the commencement of the All-India Institute of Medical Sciences (Amendment) Ordinance, 2012, shall, on and after such commencement, become an employee of the corresponding Institute and shall hold his office or service therein by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, leave, gratuity, provident fund and other matters as he would have held the same on the date of the commencement of the All-India Institute of Medical Sciences (Amendment) Ordinance, 2012, as if the said Ordinance had not been promulgated, and shall continue to do so unless and until his employment is terminated or until such tenure, remuneration and terms and conditions are duly altered by regulations:

Provided that the tenure, remuneration and terms and conditions of service of any such person shall not be altered to his disadvantage without the previous approval of the Central Government;

(e) the governing body of every society, shall, from the date of constitution of the Governing Body under sub-section (1) of section 10, stand dissolved and no chairperson or other person shall be entitled to any compensation for the premature termination of the term of his office or of any contract of service;

(f) all committees (including Standing Committee, if any) of the society shall stand dissolved;

(g) all examination conducted by the existing Institute for admission of candidates for award of medical degrees and diplomas by such society shall be valid examination and be deemed to have been conducted by the corresponding Institute.

(2) Notwithstanding anything in the Industrial Disputes Act, 1947 (14 of 1947) or in any other law for the time being in force, absorption of any employee by the corresponding Institutes in its regular service under this section shall not entitle such employee to any compensation under this Act or any other law and no such claim shall be entertained by any court, tribunal or other authority.

27C. Provisions of this Act to apply to societies incorporated into All-India Institutes of Medical Sciences under section 27A:- (1) All provisions of this Act shall, mutatis muntandis, apply to the societies, referred to in column (2) of the Table given under section 27A, incorporated into All-India Institutes of Medical Sciences referred to in column (3) of the said Table.

27D. Power to make transitory Provisions for Institutes (other than existing Institute):- (1) The Central Government may; if it is of the opinion that certain measures are required for speedy and effective functioning of corresponding Institutes (other than the existing Institute), by notification in the Official Gazette, specify such measures as it may consider necessary for the smooth and effective functioning of such Institutes:

Provided that no such notification shall be issued under this section, after the expiry of a period of two years from the date of commencement of the All-India Institute of Medical Sciences (Amendment) Ordinance, 2012.

(2) Every notification issued under this section shall be laid, as soon as may be after it is made, before each House of Parliament,".

24. Amendment of section 28 :- In section 28 of the principal Act ,-

(a) in sub-section (1), for the words " the Institute ", the words " all the Institutes " shall be substituted.

(b) in sub-section (2),-

(i) for the words " the Institute ", wherever they occur , the words " every Institute " shall be substituted.

(ii) after clause (a), the following clause shall be inserted, namely:-

"(aa) the proportion of allowances of the President to be borne by the Institutes under the proviso to section 8,".

25. Amendment of section 29 :- In section 29 of the principal Act ,-

(a) in sub-section (1),-

(i) in the opening portion, for the words "The Institute ", the words " Every Institute " shall be substituted.

(ii) after clause (n), the following proviso shall be inserted, namely:-

"Provided that the regulations made by the existing Institute, before the commencement of the All-India Institute of Medical Sciences (Amendment) Ordinance, 2012., shall continue to be the regulations made under this section until such regulations are amended or rescinded by the existing Institute in accordance with the provisions of this section, ".

(b) in sub-section (2), the following proviso shall be inserted, namely,-

"Provided that every corresponding Institute shall, within three months of the date of the commencement of the All-India Institute of Medical Sciences (Amendment) Ordinance, 2012, make regulations, ".

PRATIBHADEVI SINGH PATIL,
President,

V.K. BHASIN,
Secy to the Govt. of India.

CORRIGENDA

In the Protection of Children from Sexual Offences Act, 2012 (No 32 of 2012), as published in the Gazette of India, Extraordinary, Part II, Section I, as issue no 34 dated 20 June 2012,-

(i) on page 4, line 3, for 'clause (b)', read 'clause (l)',

(ii) on page 7, line 42, for 'Whoever employ', read 'whoever employs'

ಕರ್ನಾಟಕ ರಾಜ್ಯಪಾಲರ ಆದೇಶಾನುಸಾರ ಮತ್ತು ಅವರ ಹೆಸರಿನಲ್ಲಿ,
ಆರ್. ಆಂಜಿನಿ,
ಸಹಾಯಕ ಪ್ರಾರೂಪಕಾರ ಮತ್ತು ಪದನಿಮಿತ್ತ
ಸರ್ಕಾರದ ಉಪಕಾರ್ಯದರ್ಶಿ,
ಸಂಸದೀಯ ವ್ಯವಹಾರಗಳು ಮತ್ತು ಶಾಸನ ರಚನೆ ಇಲಾಖೆ.

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